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No. 80-1990

In the Supreme Court of the United States

OCTOBER TERM, 1981

CASPAR WEINBERGER, ET AL.,

Petitioners,

v.

CARLOS ROMERO-BARCELO, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

JOINT APPENDIX

PETITION FOR CERTIORARI FILED, MAY 26, 1981
CERTIORARI GRANTED OCTOBER 5, 1981

TABLE OF CONTENTS

	Page
Chronological List of Relevant Docket Entries	1
Complaint	3
Amendment to Complaint	45
Answer	55
Supplemental Complaint	71
Excerpts from Plaintiffs' Proposed Findings of Fact	73
Excerpts from Plaintiffs' Post-trial Brief	97
Plaintiffs' Exhibits	
CRB-3 1974 Letter from Governor to Secretary of Navy	111
CRB-11 1974 Memo from Deputy Chief of Naval Operations to Vice Chief of Naval Operations	114
CRB-38 1974 Letter from Ramage to Clifford	117
CRB-58 1972 Telegram re Culebra Relocation	119
CRB-67 1971 Memo to Secretary of the Navy, with enclosures	120
CRB-87 1974 Excerpt from Memo—McCorvey	126
CRB-100 1975 Enclosure to Notice from Commander-in-chief, U.S. Atlantic Fleet	132
CRB-114 1973 Memo to Secretary of Navy	135
CRB-116 1974 Memo to Secretary of Defense et al from Kissinger	137
CRB-117 1975 Memo to Wickham from Scowcraft	138
CRB-118 1972 Memo from Laird	139
CRB-120 1970 Letter from Nixon to Governor	142
CRB-123 Charts: U.S. Navy Training Activity, Vieques	145
CRB-126 1973 Telegram from CND Washington to CINCLANTFLT Norfolk	153

Page

CRB-234 1975 Letter from Governor to Secretary of Defense 159

CRB-243 1975 Telegram from CND Washington to CINCLANTFLT Norfolk 168

CRB-332 1971 Letter from Governor to Secretary of Defense 172

CRB-417 Excerpts from Answers to Interrogatories.... 174

CRB-419-421 Five Year Development Plans 176

Order Allowing Certiorari 186

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

1 March 1, 1978 Complaint for declaratory and injunctive relief, filed.

20 March 21, 1978 Amendment to complaint, filed.

50 May 17, 1978 Answer of defts. Harold Brown, Sec. of Defense, W. Graham Claytor Jr., Sec. of the Navy, etc., filed.

71 July 13, 1978 Plff's Carlos Romero Barcelo et als mot. for leave to file supplemental complaint filed, with memo. in support thereof, supplemental complaint, tendered.

Aug. 17, 1978 Order at foot of plffs' mot. for leave to file supplemental complt.: GRANTED. (J. Torruella) s/c Geigel, Hodges, Sec. of Justice, Berkan & Varela, U.S. Atty Carlo, Saade.

82 Aug. 17, 1978 Supplemental complaint, filed.

Aug. 17, 1978 Order at foot of plffs.' Luis Medina et als. for leave to file amended complaint, filed on 7-24-78: GRANTED. (J. Torruella) s/cs to Geigel, Hodges, Sec. of Justice, Berkan & Varela, U.S. Atty., Carlo, Saade.

94 Aug. 29, 1978 Plff's, Carlos Romero Barcelo mot. for amendment of complaint and memo. in support thereof, filed. Second amendment to complaint, tendered

215 Sept. 17, 1979 Decision and Order, dtd. 9-17-79, that the Ct. is of the opinion that under the present circumstances the continued use of Vieques by Deft. Navy for naval training activities is essential to the defense of the Nation and that enjoining of said activities is not an appropriate relief for the correction of the cited statutory violations. It is ordered that the Navy "with all deliberate speed" file for and seek a NPDES permit for release of firing of ordinance into the waters of Vieques; Nominate to the Sec. of Interior sites in Vieques that may be eligible for listing in the National Register of Historic Places, etc., comply with provisions of 42 USCA

4332(c). All other claims are dismissed as well as all claims against deft. in their individual capacities and against John Doe, Deft. A s.c. shall be held before Mag. within 20 days for the establishment of a written time-table for compliance with this Order, which time table shall be subject to approval of the Ct. Clerk shall enter Judgment accordingly, filed and entered (J. Torruella) S/cs to U.S. Atty., G. Carlo, P. Saade, J. Berkan, W. Geigel and J. L. Cordova.

229 Nov. 14, 1979 Plff's notice of appeal of ct's judgmt. ent'd on 9-17-79, fld. S/sc to Appeal Clerk

230 Nov. 19, 1979 Judgment that U.S. Navy "with all deliberate speed" proceed to: file for and see a NPDES permit for the release of firing ordinance into the waters of Vieques nominate to the Sec. of the Interior sites in Vieques that may be eligible for listing in the National Register of Historic Places, and/or seek the opinion of the Sec. respecting said eligibility and further take appropriate action for the protection of any such prospective sites pending decision as to their eligibility etc. and that all other claims be and are hereby dismissed as well as all claims against defts. in their individual capacities and against John Doe defts. fld. and ent'd (Clerk) S/cs to J.A. Hodges, Harker, Rivlin, Geigel, G. Carlos, Sec. of Justice, P. Saade, P. Varela and J. Berkan.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil Action No. 78-323

CARLOS ROMERO BARCELO, Governor of Puerto Rico, on his own behalf and on behalf of the Commonwealth of Puerto Rico and THE PEOPLE OF PUERTO RICO,

and

THE COMMONWEALTH OF PUERTO RICO,

and

BOARD ON ENVIRONMENTAL QUALITY OF PUERTO RICO,

and

RADAMES TIRADO GUEVARA, *Mayor, Vieques*, PLAINTIFFS

v.

HAROLD BROWN, Secretary of Defense,

and

W. GRAHAM CLAYTOR, JR., Secretary of the Navy,

and

JAMES L. HOLLOWAY, Chief of Naval Operations,

and

I. C. KIDD, JR., Commander-in-Chief, Atlantic Fleet,

and

LOUIS H. WILSON, Commandant,
United States Marine Corps, DEFENDANTS

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I.

NATURE OF THE ACTION

1. Plaintiffs seek a declaration that certain actions of officers of the Department of Defense ("DoD") and the

Department of the Navy ("Navy") and their agents that result in ongoing and increasing significant adverse environmental effects on the island of Vieques, its surrounding waters, and its people, constitute violations of various federal and local laws. Plaintiffs also seek preliminary and permanent injunctive relief requiring Defendants to comply fully with such laws and to cease their illegal activities.

II.

JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (Federal Question); 28 U.S.C. § 1332 (Diversity); 28 U.S.C. § 1361 (Mandamus); 28 U.S.C. § 1337 (Commerce); 28 U.S.C. §§ 2201-02 (Declaratory Judgment); 5 U.S.C. §§ 701-06 (Administrative Procedure); 16 U.S.C. § 470 (Historic Preservation); 16 U.S.C. § 1651 (Coastal Zone Management); 16 U.S.C. § 1540 (Endangered Species); 33 U.S.C. § 466 (Water Pollution); 33 U.S.C. § 1415 (Marine Protection); 42 U.S.C. § 4321 (National Environmental Policy Act); 42 U.S.C. § 4911 (Noise); 42 U.S.C. § 6961 (Resource Recovery); 42 U.S.C. § 7401 (Clean Air). The amount in controversy herein exceeds Ten Thousand Dollars, exclusive of interest and costs.

3. There exists between the parties an actual controversy, justiciable in nature, with respect to which Plaintiffs require relief by this Court.

PARTIES

4. Plaintiff Carlos Romero-Barceló is Governor of the Commonwealth of Puerto Rico.

5. Plaintiff the Commonwealth of Puerto Rico includes the island of Vieques.

6. Plaintiff the People of the Commonwealth of Puerto Rico are the "citizens" of Puerto Rico within the meaning of 28 USC 1332.

7. Plaintiff Radamés Tirado Guevara is the Mayor of the island of Vieques, a Municipal Division of the Commonwealth of Puerto Rico.

8. Plaintiff the Board on Environmental Quality is an agency of the Commonwealth of Puerto Rico created by legislation and empowered to protect environmental quality.

9. Defendant Harold Brown is the United States Secretary of Defense and has control and authority over the Department of Defense including its military operations on or in the vicinity of Vieques. Defendant Brown is sued individually and in his official capacity.

10. Defendant W. Graham Claytor, Jr., is the Secretary of the Navy under the direction and control of the Secretary of Defense and has control and authority over all Navy operations including those on or in the vicinity of Vieques. Defendant Claytor is sued individaully and in his official capacity.

11. Defendant James L. Holloway is the Chief of Naval Operations under the direction and control of the Secretary of the Navy and exercises command over the Operating Forces of the Navy including Navy operations on or in the vicinity of Vieques. Defendant Holloway is sued individually and in his official capacity.

12. Defendant I. C. Kidd, Jr. is an Admiral, United States Navy, and the Commander in Chief United States Navy Atlantic Fleet and is in charge of Navy operations on or in the vicinity of Vieques. Defendant Kidd is sued individually and in his official capacity.

13. Defendant Louis H. Wilson is a General, United States Marine Corps, and the Commandant of the United States Marine Corps and is in charge of Marine Corps operations on or in the vicinity of Vieques. Defendant Wilson is sued individually and in his official capacity.

14. No defendant is a "citizen" of Puerto Rico, within the meaning of 28 USC 1332.

IV.

VIEQUES, PUERTO RICO

15. Vieques is an island approximately ten miles off the southeastern coast of the island of Puerto Rico. It has over 9,000 inhabitants. The island is approximately 20 miles long and four miles wide and consists of approximately 33,000 acres of land. It has two towns, Isabel Segunda and Esperanza.

16. The coastal areas of Vieques contain beautiful beaches, coral reefs, mangrove swamps, and rare, environmentally fragile phosphorescent bays. The island contains rich and varied flora and fauna, including rare and endangered species. It has numerous birds, semi-wild horses, and rich marine life supported by coral reefs, mangrove swamps, marine grasses, and beach habitats.

17. Vieques has a long and varied cultural history. The first inhabitants were Carib Indians who came from South America by way of the Lesser Antilles, occupying the island on their way to Puerto Rico and beyond. Other Indians moved to Vieques to escape the Spaniards during the Spanish Conquest of Puerto Rico. During the 17th and 18th centuries the island was occupied by the French, English, Danish and Spanish. The 19th century saw a substantial increase in social and economic development on the island. As a result of the Spanish-American War, Vieques, along with the rest of Puerto Rico, came under the political control of the United States.

18. The Navy has acquired title over 70 percent of the land on Vieques. The Defendants use the major part of the island for weapons training, shore bombardment, aircraft weapons firing, missile launching exercises, and ammunition storage. The coastal waters surrounding Vieques are also used for maneuvers, weapons training, and amphibious operations under the control of Defendants.

19. Navy (which term hereinafter includes the Marine Corps) facilities and operations on Vieques are adjacent to the inhabited areas of the island, which areas are used for residential, educational, recreational, religious, cultural, and commercial activities.

20. Military operations under the control of the Defendants are regularly conducted in coastal waters around Vieques, including waters used for commercial fishing and sport fishing by residents of Vieques and of other areas. Fishing is severely limited because of such operations. Cattle grazing, agriculture and other activities are severely limited because of military operations on and around Vieques. Numerous cattle have been killed by such operations.

21. Aerial bombing, target practice by Navy artillery, strafing attacks by military aircraft, amphibious landings, missile fire, ground force attacks and gunfire and other military operations on and around Vieques (hereinafter some times collectively referred to as "military operations"), all under the control and authority of Defendants, cause water pollution and irreparable damage to the ocean waters, the coastal waters, the coral reefs, mangrove swamps, rare phosphorescent bays, beaches, and bluffs of Vieques and otherwise harm and endanger the natural, historical and archeological resources of Vieques, the coastal zone and the ocean around Vieques.

22. The residents of Vieques, other citizens of Puerto Rico, tourists and others who visit Vieques or its vicinity, are exposed to loud, raucous, excessive and offensive noises and to offensive air pollutants caused by jet aircraft flights, bombing maneuvers, helicopter sorties, aerial strafing, rocket fire, shelling, missile launchings, demolition operations, mortar fire, tank and anti-tank fire, and other gunfire under the control of Defendants. Said noises interfere with human speech, sleep, and other normal and reasonable activities of the residents, inhabitants and vistors of Vieques and others, create

shock waves and are destructive of the property and comfort, enjoyment and health of said persons. Said noise and air pollution deprive Plaintiffs and the residents of Vieques of the full, normal and reasonable enjoyment, use and value of their property.

23. Military activities and operations on and around Vieques have imposed restrictions on and contributed to the increased cost of a safe and plentiful drinking water supply for the residents of the island.

24. Military activities and operations on and around Vieques impose severe restrictions on and unreasonably interfere with the use and development of the island and are thereby destructive of the economic, social and cultural well-being and progress of the residents of Vieques.

25. Artillery target practice, aerial bombings and strafing operations, missile fire and gunfire and other military operations under the control of Defendants on and around Vieques pose a significant hazard of immediate injury to the citizens of Puerto Rico and others who reside, work, visit or otherwise frequent Vieques or the water adjacent to it and pose long-term insidious risks to human safety because of the accumulation of hidden unexploded ordnance and because of long-term physical and psychological effects.

26. Military activities and operations under the control of Defendants on and around Vieques adversely affect the health, safety and welfare of the citizens of Puerto Rico and others who reside, work, visit or otherwise frequent Vieques or the waters adjacent to it.

27. Military activities and operations under the control of Defendants on and around Vieques are highly controversial among residents of Vieques, other citizens of Puerto Rico and others because of environmental aspects.

V.

FIRST CLAIM FOR RELIEF

Defendants Have Failed to Prepare Adequate, Detailed Environmental Impact Statements With Respect to Military Activities and Operations on Vieques as Required by the National Environmental Policy Act

28. Plaintiffs reallege and incorporate by reference herein preceding paragraphs 1 through 27 inclusive.

29. Section 102(2)(C) of the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. § 4332(2)(C), directs that all agencies of the Federal government shall, to the fullest extent possible:

> "(C) Include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—
>
> (i) The environmental impact of the proposed action,
>
> (ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,
>
> (iii) Alternatives to the proposed action,
>
> (iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
>
> (v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. . . ."

30. Section 102(2)(C) and all other provisions of NEPA became effective on January 1, 1970.

31. Guidelines issued by the Council on Environmental Quality, 40 C.F.R. Part 1500 ("CEQ Guidelines"), Regulations adopted by the Department of Defense, 32 C.F.R. Part 214 ("DoD Regulations"), and Chief of Naval Operations Instructions 6240.2B ("Navy Instructions") apply to Defendants.

32. CEQ Guidelines require: (a) that each federal agency make a detailed assessment of the potential environmental effects of any proposed action and file environmental impact statements for action sincluding "requests for appropriations" that may significantly affect the quality of the human environment (40 C.F.R. §§ 1500.2, 1500.5), and (b) that the statutory clause "major Federal actions significantly affecting the quality of the human environment" is to

> "be construed by agencies with a *view to the overall, cumulative impact of the action proposed, related Federal actions and projects in the area, and further actions contemplated. Such actions may be localized in their impact, but if there is potential that the environment may be significantly affected, the statement is to be prepared.* Proposed major actions, the environmental impact of which is *likely to be highly controversial,* should be covered in all cases." (Emphasis added.) (40 C.F.R. § 1500.6(a).)

33. DoD Regulations require that

> (a) DoD Components shall
>
> "(1) Assess at the earliest practical stage in the planning process and in all instances prior to the first significant point of decision, the environmental consequences of proposed actions.
>
> (2) Review those continuing actions initiated prior to enactment of Pub. L.

91-190 for which the environmental consequences have not been assessed and ensure that any of the remaining actions are consistent with the provisions of this Part." (32 C.F.R. §§ 214.3(b)(1), (2).)

(b) "DoD Components shall insure that a decision is not made until the environmental consequences of the decision have been assessed. If the assessment indicates that the decision will either affect the environment on a large geographical scale or *have a serious environmental effect in a more restricted geographical area*, the proposed action shall be considered a Major Action Significantly Affecting the Quality of the Human Environment (MASAQHE), and the decision shall be deferred until Federal agencies possessing special expertise or *persons affected by the environmental effects of the decision have had an opportunity to present their views.*" (32 C.F.R. § 214.7(b).) (Emphasis added.)

(c) An example of an action that *should be classified as a MASAQHE because of a localized effect is an extremely noisy activity to be conducted by a DoD Component* near a residential area, where the resulting noise might seriously affect the comfort of residents of the area over an extended period. *In keeping with the intent of NEPA, no decision should be made to take any actions until those residents have been given an opportunity to present their views and their views have been carefully considered.*" (32 C.F.R. § 214.7(b)(3).) (Emphasis added.)

(d) "Certain types of actions require close environmental scrutiny because of the possi-

bility that they may either affect the quality of the environment or *create environmental controversy*. It may be desirable in such cases to have a complete presentation of the environmental aspects of the proposed action available for any interested party. For these reasons, consideration shall be given to documenting the environmental effect of the following types of actions in writing:" (Emphasis added.) (32 C.F.R. § 214.7(d).)

> "Production, storage, transportation, testing or disposal of lethal chemical munitions, pesticides, herbicides and containers." (32 C.F.R. § 214.7(d)(6).)
>
> "Mission changes and troop developments which precipitate long-term population increases or decreases in any area, with special attention to the secondary impacts which may cause indirect environmental impact." (32 C.F.R. § 214.7(d)(7).)
>
> "Constructing or installing fences or other barriers that might prevent migration or free movement of wildlife." (32 C.F.R. § 214.7(d)(9).)
>
> "Exercises on or off Federal property, where significant environmental damage might occur regardless of unit sizes." (32 C.F.R. § 214.7(d)(14).)
>
> "Opening areas that were previously closed to the public or closing or limiting of areas that previously were open to public use, such as roads or recreational areas." (32 C.F.R. § 214.7(d)(15).)
>
> "Any action which because of real, potential or purported adverse environmental

consequences, *is a subject of controversy among people who will be affected by the action*, or which, although not the subject of controversy, is likely to create controversy when the proposed action becomes known by the public." (Emphasis added.) (32 C.F.R. § 214.7(d)(21).)

(e) "Even though a written assessment supports the conclusion that an action is not a MASAQHE, an environmental impact statement is to be written on a proposed action which is *highly controversial because of environmental aspects.* The environmental statement should be based on the information contained in the assessment." (Emphasis added.) (32 C.F.R. § 214.7(e).)

(f) "*For those [budget] items which are identified as major actions having a significant effect on the environment, or which are controversial, an environmental impact statement shall be prepared which will accompany the [annual] budget request.*" (Emphasis added.) (32 C.F.R. § 214.6(d)(ii).)

34. Subsequent to January 1, 1970, Defendants or their predecessors in office have undertaken the following federal actions:

(a) Sought Congressional appropriations for the continuation of and increase in a multitude of military operations on and around Vieques as described heretofore in paragraphs 18 through 27 inclusive;

(b) Continued the military operations on and around Vieques as described in paragraphs 18 through 27 inclusive;

(c) Pursued policies resulting in a significant increase in the military operations on and around Vieques as described in paragraphs 18 through 27 inclusive;

(d) Undertaken the annual implementation of the major Navy operations of what is sometimes called Operation Springboard on and around Vieques, conducted as described heretofore in paragraphs 18 through 27 inclusive;

(e) Planned Operation Solid Shield 78, "a major joint service military exercise" using jet fighters, helicopters, Navy vessels, and ground forces on and around Vieques, scheduled for May 10 through May 23, 1978 (42 Fed. Reg. 61049 (Dec. 1, 1977); 42 Fed. Reg. 63181 (Dec. 15, 1977);

(f) Refused or otherwise failed to enact regulations, procedures or policies that would prevent, abate, reduce, mitigate or otherwise control the significant environmental effects of their continuing and increased military operations on and around Vieques as described in paragraphs 18 through 27 inclusive and paragraph 34;

(g) Refused or otherwise failed to evaluate the continuing and increased military operations on and around Vieques as described in paragraphs 18 through 27 inclusive and paragraph 34 in the light of substantial environmental legislation and Executive Orders including the Endangered Species Act, 16 U.S.C. § 1540; the National Historic Preservation Act, as amended, 16 U.S.C. § 470; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 466; the Marine Protection, Research and Sanctuaries Act, 33 U.S.C. § 1415; the Clean Air Act, as amended, 42 U.S.C. § 7401; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901; the Noise Control Act of 1972, 42 U.S.C. § 4911; the National Historic Preservation Act, 16 U.S.C. § 470; the Coastal Zone Management Act, 16 U.S.C. § 1451; and Executive Order 11593.

35. Each of the actions described in paragraph 34 is individually a "major federal action significantly affecting the quality of the human environment" for which Defendants and their predecessors in office have been required to prepare adequate, detailed environmental

impact statements pursuant to the provisions of Section 102(2)(C) of NEPA, CEQ Guidelines, DoD Regulations, and Navy Instructions.

36. The actions described in paragraph 34 considered cumulatively constitute a "major federal action significantly affecting the quality of the human environment" for which Defendants and their predecessors in office have been required to prepare adequate, detailed environmental impact statements pursuant to the provisions of Section 102(2)(C) of NEPA, CEQ Guidelines, DoD Regulations and Navy Instructions.

37. Defendants and their predecessors have unlawfully failed to provide an opportunity for Plaintiffs, the residents of Vieques, and others to present their views with respect to each of the actions on and around Vieques as described in paragraph 34.

38. Defendants and their predecessors each year since 1970 and continuing to the present have assisted in the preparation of budget requests that have included funds to be used for military activities and operations on and around Vieques. Defendants and their predecessors have unlawfully failed to file with such budget requests the required adequate, detailed environmental impact statements with respect to such activities and operations on and around Vieques.

39. Defendants and their predecessors have unlawfully failed to prepare adequate, detailed environmental impact statements on the actions as described in paragraph 34 that significantly affect the environment or are controversial.

40. Each of the actions described in paragraph 34 and each of the unlawful acts in paragraphs 37 through 39 are, individually and cumulatively, therefore unlawful actions within the meaning of NEPA, applicable regulations, instructions, and the Administrative Procedure Act, 5 U.S.C. § 706(2).

41. Because of the failure of Defendants and their predecessors to prepare and circulate a detailed, adequate

statement on the impact of each of the actions described in paragraph 34, and because of their failure to discuss alternatives to those actions as required by Section 102(2)(C) of NEPA, Plaintiffs have been deprived of their right to review and to comment adequately upon the proposed actions of Defendants and alternatives to such actions and have been harmed by the resulting military operations.

42. Defendants and their predecessors, having consistently refused or failed to comply with the mandates of Sections 102(2)(C) of NEPA, CEQ Guidelines, DoD Regulations, and Navy Instructions with respect to each action described in paragraph 34, can reasonably be expected to persist in such illegal conduct in the absence of an order from this Court.

43. Such a continued refusal or failure to comply with the requirements of NEPA, CEQ Guidelines, DoD Regulations, and Navy Instructions would cause Plaintiffs irreparable injury for which they have no adequate remedy at law.

WHEREFORE, Plaintiffs request that this Court grant the following relief:

(A) Enter an Order declaring unlawful the refusal or failure of Defendants and their predecessors to prepare an adequate, detailed environmental impact statement with respect to each of the actions described in paragraph 34; and,

(B) Enter an Order declaring unlawful each of the actions described in paragraph 34; and,

(C) Enter an Order declaring that Defendants are required to prepare an adequate, detailed environmental impact statement with respect to each of the actions described in paragraph 34; and,

(D) Issue a mandatory injunction or writ of mandamus directing Defendants to prepare an adequate, detailed statement as to the environmental impact of each of the actions described in paragraph 34; and,

(E) Preliminarily and permanently enjoin Defendants from continuing each of the actions described in paragraph 34 unless and until Defendants comply with the requirements of NEPA, and CEQ Guidelines, DoD Regulations, and Navy Instructions; and,

(F) Grant Plaintiffs their costs and disbursements in this matter; and,

(G) Grant Plaintiffs such other and further relief as the Court may deem appropriate.

VI.

SECOND CLAIM FOR RELIEF

Defendants In The Course Of Conducting Military Operations On And Around Vieques Have Violated The Federal Water Pollution Control Act

44. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 43 inclusive.

45. Section 313 of the Federal Water Pollution Control Act of 1972, as amended, 33 U.S.C. § 1323, and Executive Order 11752 require each department and instrumentality of the executive branch of the federal government to comply with federal, state and local requirements respecting control and abatement of water pollution.

46. Section 301(a) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1311(a), makes unlawful "the discharge of any pollutant by any person" without obtaining a permit pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

47. The definition of the term "pollutant" in Section 502(6) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1362(6), includes, *inter alia*, "munitions."

48. Defendants, in the course of conducting military operations on and around Vieques, cause the discharge of munitions and other pollutants into the territorial

sea and the contiguous zone surrounding the island, which discharge has, *inter alia*, resulted in soil erosion and the movement of sediment into the coastal waters of Vieques thereby irreparably harming coral reefs and marine life.

49. Upon information and belief, Plaintiffs allege that neither Defendants nor those under their command have secured any permit from authorities that allows them to discharge pollutants into the territorial sea and contiguous zone surrounding Vieques.

50. In discharging pollutants into the territorial sea and contiguous zone surrounding Vieques, Defendants are in violation of Section 301(a) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1311(a).

WHEREFORE, Plaintiffs request that this Court grant the following relief:

(A) Declare that Defendants are in violation of the Federal Water Pollution Control Act, as amended, and Executive Order 11752; and,

(B) Preliminarily and permanently enjoin Defendants and their agents from discharging munitions or other pollutants into the territorial sea and the contiguous zone surrounding Vieques until Defendants have complied with the requirements of the Federal Water Pollution Control Act, as amended, and Executive Order 11752; and,

(C) Preliminarily and permanently enjoin Defendants and their agents from failing to perform all acts required of them by the Federal Water Pollution Control Act, as amended; and,

(D) Grant Plaintiffs their costs and disbursements; and,

(E) Grant Plaintiffs such further relief as the Court may deem appropriate.

VII.

THIRD CLAIM FOR RELIEF

Defendants In The Course Of Conducting Military Operations On And Around Vieques Have Violated The Marine Protection, Research and Sanctuaries Act

51. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 50 inclusive.

52. The Marine Protection, Research and Sanctuaries Act, 33 U.S.C. §§ 1401, 1411, 1412, provides that except as may be authorized by permit, no agency of the United States shall transport any material for the purpose of dumping it into ocean waters.

53. Upon information and belief, Plaintiffs allege that agents of Defendants, in the course of conducting military operations on and around Vieques, transport bombs, ordnance and munitions and cause them to be dumped into the ocean waters that surround the island.

54. The dumping of bombs, ordnance and munitions by military personnel under the control of Defendants adversely affects human health, welfare, and amenities, the marine environment, ecological systems, and the economic potentialities of the island.

55. The dumping of bombs, ordnance and munitions by personnel under the control of Defendants has been and is being accomplished without the issuance of a permit by the Administrator of the Federal Environmental Protection Agency.

56. By dumping bombs, ordnance and munitions, in the aforementioned manner, Defendants are violating the requirements of the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. §§ 1401, 1411, and 1412.

WHEREFORE, Plaintiffs request that this Court grant the following relief:

(A) Declare that Defendants are in violation of the Marine Protection, Research and Sanctuaries Act; and

(B) Preliminarily and permanently enjoin Defendants and their agents from utilizing ordnance, bombs and munitions on or around the ocean waters surrounding Vieques until they have complied with the requirements of the Marine Protection, Research and Sanctuaries Act; and,

(C) Preliminarily and permanently enjoin Defendants and their agents from failing to perform all acts required of them by the Marine Protection, Research and Sanctuaries Act; and,

(D) Grant Plaintiffs their costs and disbursements; and,

(E) Grant Plaintiffs such further relief as the Court may deem appropriate.

VIII.

FOURTH CLAIM FOR RELIEF

Defendants In The Course Of Conducting Military Operations On And Around Vieques Have Violated The Water Pollution Laws Of Puerto Rico And The Federal Water Pollution Control Act

57. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 56 inclusive.

58. Puerto Rico's "Water Quality Standards Regulation," duly enacted pursuant to the Laws of Puerto Rico, Title 24 § 598 ("Water Pollution Control Act") and Title 12 § 1131 ("Public Policy Environmental Act"), contains the following definitions in Article 1:

> "Pollutants—Any substance, refuse or waste capable of polluting the waters.
>
> Pollute (to), Pollution—Altering the natural characteristics of a body of water so as to make it in any way harmful or noxious to human health, or to that of animals, or plants, or rendering it ill-smelling or impure or altering adversely its physical, chemical, microbiological or radioactive condition, in such a way as to interfere with the enjoyment of life or

property or violate the standards of purity established by this Regulation."

Article 4 of the "Water Quality Standards Regulation" further provides in part as follows:

> "No person shall cause or permit the pollution of the waters of Puerto Rico, as defined in Article 1 of this Regulation." (Article 4.1.1)
>
> "No person shall cause or permit the discharge of any water pollutant in violation of applicable rules and regulations." (Article 4.1.2)
>
> "Moreover, such rules and regulations shall be deemed to prohibit any discharge that, in the judgment of the Board, prevents or interferes with attainment or maintenance of applicable water quality standards established by this Regulation, by other laws or regulations of the Commonwealth of Puerto Rico, or by any other requirements established by the United States Government pursuant to the Federal Water Pollution Control Act Amendments of 1972 or any applicable legislation." (Article 4.1.2B)

59. The "Water Quality Standards Regulation" of Puerto Rico (§ 2.2.1A) classifies portions of the coastal waters of Vieques as Class SA, which is defined as:

> "Coastal waters whose existing characteristics should not be altered in order to preserve the existing natural phenomena. Toward that end these waters are not intended to be used for any activity, such as swimming, boating and skiing, that might be detrimental to the existing natural phenomena."

60. The "Water Quality Standards Regulation" of Puerto Rico (§ 2.2.2A) classifies portions of the coastal waters of Vieques as Class SB, which is defined as:

> "Coastal waters intended for uses where the human body may come in direct contact with the water (such as complete body submergence); and for use in propagation and preservation of desirable species."

61. The objective of Class SA waters is that they remain as nearly as possible in their natural, pristine state.

62. The uses to be protected in Class SA waters include the conservation of coral reefs and the support of shellfish and other marine life.

63. The objective of Class SB waters is that their use for recreational purposes and aesthetic enjoyment shall not be limited in any way, and these waters shall be used in the propagation and preservation of desirable commercial and other species.

64. The uses to be protected in Class SB waters are recreational, aesthetic enjoyment, and the support and propagation of commercially valuable and other desirable aquatic life.

65. The "Water Quality Standards Regulation" of Puerto Rico (§§ 4.7, 2.1.1) provides as follows:

> "Anti-degradation statement
>
> Waters, whose existing quality as of the effective date of these Regulations, is better than the standards established herein will be maintained at such quality. These and other waters of the Commonwealth will not be lowered in quality unless it has been affirmatively demonstrated to the Board that such a change is justified as a result of necessary economic or social development and will not interfere or become injurious to any assigned uses made of, or presently possible in, such waters. This will require that any industrial, public or private project, or development which would constitute a new source of pollution, or a modified source of pollution, to a high quality water body, possess as a part of the initial project design the best practicable control technology currently available. This decision of the Board shall be preceeded by adequate public notice." (§ 4.7.)

"Solids and other matter

The waters of Puerto Rico shall not contain materials attributable to discharges that will settle to form objectionable deposits. Nor will they contain floating debris, scum, oil and other floating materials attributable to discharges in amounts sufficient to be unsightly or deleterious." (§ 2.1.1.)

66. The discharge of bombs, ordnance and munitions, and other materials into and around the coastal waters of Vieques, and the conducting of military operations on such coastal waters under the direction of Defendants and their predecessors have created craters and other major changes in the coastal lands that have resulted in soil erosion and the movement of sediment into the coastal waters of Vieques thereby, *inter alia*, irreparably harming coral reefs and marine life.

67. The discharge of ordnance, bombs, munitions, oil, scum, debris and other materials into coastal waters of Puerto Rico and the conducting of other military operations on such waters under the direction of Defendants and their predecessors, render such waters harmful to human health and to the health of animals and plants in such a way as to interfere with enjoyment of life and property in violation of Puerto Rico's laws for the control of water pollution.

68. The discharge of bombs, ordnance, munitions, oil, scum, debris and other materials into the coastal waters surrounding Vieques and the conducting of military operations on such waters under the direction of Defendants and their predecessors have caused bombs, ordnance, munitions, oil, scum, debris and other materials to contaminate the coastal waters surrounding Vieques.

69. The discharge of bombs, ordnance, munitions, oil, scum, debris and other materials into coastal waters surrounding Vieques and the conducting of military operations on such waters under the direction of Defendants and their predecessors, violate the standards of quality

for coastal waters set out in the laws and regulations of Puerto Rico.

70. The failure of Defendants to comply with requirements of Puerto Rico respecting control and abatement of water pollution violates Section 313 of the Federal Water Pollution Control Act, as amended, and Executive Order 11752.

WHEREFORE, Plaintiffs request that this Court grant the following relief:

(A) Declare that Defendants are in violation of the Federal Water Pollution Control Act, as amended, and Executive Order 11752, the Water Quality Standards Regulation, the Water Pollution Control Act, and the Public Policy Environmental Act of Puerto Rico; and,

(B) Preliminarily and permanently enjoin Defendants and their agents from discharging bombs, ordnance, munitions, oil, scum, debris and other materials on or around the coastal waters of Vieques until Defendants have complied with the requirements of the aforesaid laws, Executive Order, and regulations; and,

(C) Preliminarily and permanently enjoin Defendants and their agents from utilizing bombs, ordnance and munitions on or around the coastal waters of Vieques until Defendants have complied with the requirements of the aforesaid laws, Executive Order, and regulations; and,

(D) Grant Plaintiffs their costs and disbursements; and,

(E) Grant Plaintiffs such further relief as the Court may deem appropriate.

IX.

FIFTH CLAIM FOR RELIEF

Defendants In The Course Of Conducting Military Operations On And Around Vieques Have Violated The Clean Air Act

71. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 70 inclusive.

72. Section 118 of the Clean Air Act, as amended, 42 U.S.C. § 1857f, requires that each department and instrumentality of the executive branch of the federal government shall comply with State requirements respecting control and abatement of air pollution.

73. Section 4 of Executive Order 11752 requires heads of federal agencies to ensure that all facilities under their jurisdiction conform to State air quality standards.

74. The "Regulation for Control of Atmospheric Pollution" of Puerto Rico provides that "no person shall cause or permit any material to be handled . . . without taking reasonable precautions to prevent particulate matter from becoming airborne." (§ 5.2.1.)

75. The use of ordnance, bombing and munitions on and around Vieques under the responsibility and control of Defendants generates airborne particulate matter that is carried by winds to various areas of Vieques and elsewhere.

76. The activities of Defendants that cause airborne particulate matter to be generated on and around the island of Vieques violate the air pollution standards promulgated by Puerto Rico and consequently violate Section 118 of the Clean Air Act and Executive Order 11752.

WHEREFORE, Plaintiffs request that this Court grant the following relief:

(A) Declare that Defendants are in violation of Puerto Rico's laws and regulations for control of airborne particulate matter, the Clean Air Act, as amended, and Executive Order 11752; and,

(B) Preliminarily and permanently enjoin Defendants and their agents from utilizing ordnance, bombs and munitions on or around the island of Vieques until Defendants have complied with the requirements of such laws and Executive Order; and,

(C) Grant Plaintiffs their costs and disbursements; and,

(D) Grant Plaintiffs such further relief as the Court may deem appropriate.

X.

SIXTH CLAIM FOR RELIEF

Defendants In Conducting Military Operations On And Around Vieques Have Violated The Noise Control Act of 1972

77. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 76 inclusive.

78. Shelling, aerial bombing, artillery practice, straffing attacks by military aircraft, missile fire, ground force attacks, amphibious maneuvers and gunfire and other military operations on and around Vieques all under the control and authority of Defendants create shock waves and excessive noise that unreasonably interfere with the health and welfare of residents of Vieques and other areas of Puerto Rico, and of other persons.

79. The Laws of Puerto Rico, 33 L.P.R.A. § 1365, provide:

> "Anything which is *injurious to health* or is . . . *offensive to the senses* or is an *obstruction of the free use of property* so as to interfere with the *comfortable enjoyment of life or property* by an entire community or neighborhood, or by any considerable number of persons . . . is a public nuisance. . . ." (Emphasis added.)

80. Section 4(b) of the Noise Control Act of 1972, 42 U.S.C. § 4903, and Executive Order 11752 require that each department of the federal government engaged in any activity resulting or that may result in the emission of noise shall comply with State requirements respecting control and abatement of environmental noise.

81. In taking the actions described in paragraph 78 on and around the island of Vieques in a manner that is injurious to health, offensive to the senses, and an obstruction of the free use of property so as to interfere with the comfortable enjoyment of life and property on the island of Vieques, and in other areas of Puerto Rico,

Defendants are creating a public nuisance in violation of 33 L.P.R.A. § 1365 and the Federal Noise Control Act.

WHEREFORE, Plaintiffs request that this Court grant the following relief:

(A) Declare that Defendants are in violation of the Federal Noise Control Act, Laws of Puerto Rico, 33 L.P.R.A. § 1365, and Executive Order 11752; and,

(B) Preliminarily and permanently enjoin Defendants and their agents from utilizing ordnance, bombs and munitions or conducting other military operations on or around Vieques until Defendants have complied with the requirements of the aforesaid acts and Executive Order; and,

(C) Grant Plaintiffs their costs and disbursements; and,

(D) Grant Plaintiffs such further relief as the Court may deem appropriate.

XI.

SEVENTH CLAIM FOR RELIEF

Defendants In The Course of Conducting Military Operations On and Around Vieques Have Violated The Resource Conservation And Recovery Act

82. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 81 inclusive.

83. The Resource Conservation and Recovery Act, 42 U.S.C. § 6961, provides:

> "Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal of solid waste or hazardous waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements,

both substantive and procedural (*including any requirement for permits* or reporting or *any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief*), respecting control and abatement of solid waste, or hazardous waste disposal in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges." (Emphasis added.)

84. Article 3.1.1 of the "Regulation for the Control of Solid Waste" of Puerto Rico requires that any person operating a sanitary landfill must obtain a permit from the Board on Environmental Quality.

85. Upon information and belief Plaintiffs allege that the military facilities on Vieques under control of Defendants maintain and operate one or more sanitary landfill disposal sites.

86. Upon information and belief Plaintiffs allege that Defendants have failed to obtain a permit from the Board on Environmental Quality for said sanitary landfill disposal sites.

87. In maintaining and operating sanitary landfill disposal sites on Vieques without a permit from the Board on Environmental Quality, Defendants are in violation of the Resource Conservation and Recovery Act.

WHEREFORE, Plaintiffs request that this Court grant the following relief:

(A) Declare that Defendants are in violation of the Regulation for Control of Solid Waste and the Resource Conservation and Recovery Act; and,

(B) Preliminarily and permanently enjoin Defendants and their agents from operating sanitary landfill disposal sites on Vieques until Defendants have met the standards for and obtained a permit as required by Article 3.1.1 of the "Regulation for the Control of Solid Waste"; and,

(C) Preliminarily and permanently enjoin Defendants, and their agents, from failing to perform all acts re-

quired of them by the Resource Conservation and Recovery Act; and,

(D) Grant Plaintiffs their costs and disbursements; and,

(E) Grant Plaintiffs such further relief as the Court may deem appropriate.

XII.

EIGHTH CLAIM FOR RELIEF

Defendants In The Course of Conducting Military Operations On And Around Vieques Have Placed In Jeopardy Endangered Species And Threatened Species And Have Otherwise Violated the Endangered Species Act

88. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 87 inclusive.

89. Pursuant to Section 7 of the Endangered Species Act of 1973, 16 U.S.C. § 1536, Defendants are required to carry out programs for the conservation of endangered species and threatened species.

90. Pursuant to Section 7 of the Endangered Species Act of 1973, Defendants are required to take such actions as are necessary to insure that actions authorized by them do not jeopardize the continued existence of endangered species and threatened species.

91. Pursuant to Section 7 of the Endangered Species Act of 1973, Defendants are required to take such actions as are necessary to insure that actions authorized by them do not result in the destruction or modification of the critical habitat of endangered species and threatened species.

92. Section 9 of the Endangered Species Act of 1973, 16 U.S.C. § 1538(a)(1)(B), (C), provides that except as otherwise provided in the Act it is unlawful for any person to "take" any endangered species of fish or wildlife within the United States or the territorial sea of the United States or upon the high seas.

93. Section 3 of the Endangered Species Act of 1973, 16 U.S.C. § 1532(14), provides that the term "take" means "to harass, harm, pursue, hunt, shoot, wound, trap, kill, capture or collect or attempt to engage in any such conduct."

94. Section 9 of the Endangered Species Act of 1973, 16 U.S.C. § 1538(a)(1)(G), provides that except as otherwise provided by the Act no person may violate any regulation issued pursuant to the Act pertaining to endangered species or threatened species of fish or wildlife.

95. Section 9 of the Endangered Species Act of 1973, U.S.C. § 1538(a)(2)(D), provides that except as otherwise provided by the Act no person may violate any regulation issued pursuant to the Act pertaining to endangered species or threatened species of plants.

96. On information and belief endangered species and threatened species of fish, wildlife and plants are found on and around Vieques, including, *inter alia*, Hawksbill Turtle (*Eretmochelys imbricata*), Leatherback Turtle (*Dermochelys coriacea*), and Brown Pelican (*Pelecanus occidentalis*).

97. Defendants have violated Section 7 of the Endangered Species Act of 1973 with regard to military operations authorized by them on and around Vieques in that:

(a) Defendants have neglected to carry out any program for the conservation of endangered species and threatened species that may exist on or near the island;

(b) Defendants have neglected to take necessary actions to insure that their operations do not jeopardize the continued existence of endangered species and threatened species that may exist on or near the island; and,

(c) Defendants have neglected to take necessary actions to insure that their operations do not result in the destruction or modification of the habitat of endangered species or threatened species that may be critical to said species.

98. Defendants have violated Section 9 of the Endangered Species Act of 1973 in that Defendants' military operations on and around the island of Vieques constitute an unlawful "taking" of endangered species and a violation of applicable regulations.

WHEREFORE, Plaintiffs request that this Court grant the following relief:

(A) Declare that Defendants are in violation of the Endangered Species Act; and,

(B) Preliminarily and permanently enjoin Defendants and their agents from engaging in military operations on or around Vieques until Defendants have complied with the requirements of the Endangered Species Act; and,

(C) Grant Plaintiffs their costs and disbursements; and,

(D) Grant Plaintiffs such further relief as the Court may deem appropriate.

XIII.

NINTH CLAIM FOR RELIEF

Defendants Have Violated The National Historical Preservation Act And Executive Order 11593 By Failing To Take Adequate Steps With Respect To The Effects of Vieques Military Operations On Historical, Cultural and Archeological Resources

99. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 98 inclusive.

100. Section 1 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470 ("NHPA"), states:

> "The Congress finds and declares—
>
> (a) that the spirit and direction of the Nation are founded upon and reflected in its historic past;
>
> (b) that the historical and cultural foundations of the nation should be preserved as a living part of

our community life and development in order to give a sense of orientation to the American people. . . ."

101. Section 106 of NHPA, as amended, 16 U.S.C. § 470f, requires that:

> "The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or Federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation . . . a reasonable opportunity to comment with regard to such undertaking."

102. Executive Order 11593 (May 13, 1971), note to 16 U.S.C. § 470, requires federal agencies to inventory and nominate properties under their jurisdiction or control to the National Register of Historic Places ("National Register"). Until such processes are complete, federal agencies must submit any proposal for the "substantial alteration" of federally owned properties eligible for inclusion on the National Register to the Advisory Council on Historic Preservation for review and comment.

103. Executive Order 11593 directs federal agencies to do the following:

> (a) "[E]xercise caution during the interim period until inventories and evaluations . . . are complete to assure that any federally owned property that might qualify for nomination is not inadvertently . . . demolished or substantially altered. The agency head shall refer any ques-

tionable actions to the Secretary of Interior for an opinion respecting the property's eligibility for inclusion on the National Register of Historic Places." (§ 2(b)); and,

(b) "[I]nstitute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural or archeological significance." (§ 1(3).)

104. The Advisory Council to the President and Congress has promulgated Procedures for the Protection of Historic and Cultural Properties (36 C.F.R. Part 800) pursuant to NHPA and Executive Order 11593. Said procedures are applicable to federal agencies and provide in part as follows:

(a) Federal undertakings subject to Section 106 of NHPA and Executive Order 11593 include requests for appropriation and any new or continuing project or program (36 C.F.R. §§ 800.3(c)(1), (2));

(b) "At the earliest stage of planning or consideration of a proposed undertaking," a federal agency shall take the following steps:

(1) Identify properties within the area of the undertaking's potential environmental impact that are included in or eligible for inclusion in the National Register (36 C.F.R. § 800.4(a));

(2) As to such properties, consult with the State Historic Preservation Office (36 C.F.R. § 800.4(a)(2));

(c) Federal projects must be designated as having an adverse effect on properties that are listed on or eligible for listing on the National Register if any condition of the federal undertaking may cause any change in the quality of the historical, archeological, architectural or cultural character that qualifies the property under the National Register and the change is a result of alteration or destruction of part of the property, isola-

tion from or alteration of its surrounding environment, introduction of visual, audible or atmospheric elements that are out of character with the property or alter its setting, or neglect of the property resulting in its deterioration or destruction (36 C.F.R. §§ 800.4(b), 800.8, 800.9);

(d) As to such projects determined to have an adverse effect, the Federal agency must notify the Advisory Council, the State and the public (36 C.F.R. §§ 800.4(e), 800.5(c)) and evaluate feasible alternatives to the project to avoid or mitigate adverse effects (36 C.F.R. § 800.5(d)).

105. Vieques contains two buildings that are included on the National Register of Historic Places:

(a) Fuerte de Vieques, and
(b) Frenchman's House.

106. Vieques contains at least two additional buildings that are of historical significance and are eligible for inclusion on the National Register of Historic Places:

(a) El Faro, and
(b) Tumbas de Le Guidlou.

107. Defendants continuing military activities and operations on Vieques have an adverse effect on at least the following buildings that are included or eligible for inclusion on the National Register:

(a) Fuerte de Vieques,
(b) Frenchman's House,
(c) El Faro, and
(d) Tumbas de Le Guidlou.

108. Defendants' proposed new military activities and operations on Vieques would have an adverse effect on the buildings described in paragraph 107.

109. Defendants have undertaken continuing military activities and operations on Vieques in violation of required procedures to determine whether the undertaking

has an adverse effect on the buildings described in paragraph 107.

110. Defendants have undertaken new military activities and operations on Vieques in violation of required procedures to determine whether the undertaking has an adverse effect on the buildings described in paragraph 107.

111. Defendants have undertaken continuing military activities and operations on Vieques that have an adverse effect on the buildings described in paragraph 107 in violation of required procedures for public disclosure and public consideration of such adverse effects.

112. Defendants have undertaken new military activities and operations on Vieques that have an adverse effect on the buildings described in paragraph 107 in violation of required procedures for public disclosure and public consideration of such adverse effects.

113. Vieques contains sites of historical, cultural or archeological significance that are located within the area of potential environmental impact of Defendants' continuing and new military activities and operations.

114. Defendants have undertaken continuing and new military activities and operations on Vieques in violation of required procedures to locate, evaluate, inventory and nominate to the Secretary of the Interior sites that are eligible for inclusion on the National Register.

115. Defendants have undertaken continuing and new military activities and operations on Vieques in violation of their duty to assure that any federally owned property that might qualify for nomination to the National Register is not destroyed, or substantially altered, has its surrounding environment altered, or suffers from visual, audible or atmospheric elements that are out of character with the property or the setting, before it has been located and evaluated for eligibility in accordance with required procedures.

116. Defendants have continued military activities and operations and have authorized new military activities

and operations on Vieques that are inherently destructive to and otherwise adversely affect sites of historical, cultural and archeological significance to Plaintiffs without attempting adequately to locate, evaluate, inventory or nominate to the Secretary of Interior sites that may qualify for inclusion on the National Register.

117. Defendants have undertaken military activities and operations and have continued to authorize military activities and operations that have substantially altered and otherwise adversely affect sites that are included on the National Register and other sites of historical, cultural and archeological significance that may be eligible for inclusion on the National Register.

118. Defendants' continuing and new military activities and operations on and around Vieques are in violation of the requirements of the Section 106 of NHPA, of Executive Order 11593, and of regulations issued thereunder.

WHEREFORE, Plaintiffs request that this Court grant the following relief:

(A) Declare that Defendants are in violation of the National Historic Preservation Act, as amended, Executive Order 11593 and 36 C.F.R. Part 800; and,

(B) Preliminarily and permanently enjoin Defendants and their agents from engaging in military activities and operations until Defendants have complied with the requirements of the aforesaid statute, Executive Order, and regulations; and,

(C) Grant Plaintiffs their costs and disbursements; and,

(D) Grant Plaintiffs such further relief as the Court may deem appropriate.

XIV.

TENTH CLAIM FOR RELIEF

Defendants In the Court of Conducting Military Operations On And Around Vieques Have Violated The Coastal Zone Management Act

119. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 118 inclusive.

120. The Coastal Zone Management Act, 16 U.S.C. §§ 1451-64, requires that federal activity affecting areas subject to an approved coastal management program must to the maximum extent practicable be consistent with that program. 16 U.S.C. § 1456(c).

121. The Commonwealth of Puerto Rico has developed and submitted for approval to the United States Department of Commerce a coastal zone management program (hereinafter "the program"). The program is designed to protect coastal areas of Vieques and other coastal areas of Puerto Rico.

122. Approval of the program by the Department of Commerce is expected shortly.

123. Military operations on Vieques under the direction of Defendants are inconsistent with the program and threaten irreparable harm to certain coastal zone areas covered by it.

124. Such harm would render nugatory the approval of the program with respect to the affected coastal zone areas of Vieques.

WHEREFORE, Plaintiffs request that this Court grant the following relief:

(A) Declare that Defendants are in violation of the Coastal Zone Management Act; and,

(B) Preliminarily and permanently enjoin Defendants and their agents from military operations that would harm coastal zone areas subject to the program; and,

(C) Grant Plaintiffs their costs and disbursements; and,

(D) Grant Plaintiffs such further relief as this Court may deem appropriate.

XV.

ELEVENTH CLAIM FOR RELIEF

Defendants Have So Planned, Authorized, Directed And Conducted Military Operations On And Around Vieques As To Maintain A Public Nuisance

125. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 124 inclusive.

126. Defendants' actions affecting Vieques as described in paragraphs 18 through 27 and 34 have been conducted in such a manner, under such circumstances and to such an extent as to harm the environment of Vieques and to unreasonably interfere with Plaintiffs' use and enjoyment of their houses and property and of the environment of Vieques and of other areas of Puerto Rico.

127. Defendants have conducted and continue to conduct said operations in such a manner as to greatly impair and diminish the value of Plaintiffs' property.

128. Defendants have conducted and continue to conduct said operations as described in paragraphs 18 through 27 and 34 so as to present an unreasonable hazard to the health and safety of residents of Vieques and of other areas of Puerto Rico and of those persons who visit Vieques and the waters adjacent to it.

129. All acts and facts as set forth in paragraphs 18 through 27 and 34 have been with the knowledge of Defendants and their predecessors in office.

130. All acts as described in paragraphs 18 through 27, 34, and 125 through 129 and in the First through Twelth Claims for Relief of this Complaint constitute a public nuisance under the federal common law and the law of Puerto Rico.

131. Plaintiffs have frequently requested Defendants of their agents to abate said public nuisance but Defendants have neglected and refused to do so.

132. Defendants threaten to continue and intend to continue to maintain said public nuisance and unless restrained therefrom will continue so to maintain it.

133. The continuation of said public nuisance would cause Plaintiffs irreparable injury for which they have no adequate remedy at law.

WHEREFORE, Plaintiffs request that this Court grant the following relief:

(A) Declare that military activities and operations under the control of Defendants on and around Vieques constitute a public nuisance under federal common law and the law of Puerto Rico; and,

(B) Preliminarily and permanently enjoin Defendants and their agents from maintaining military activities and operations on and around Vieques in such a manner as to constitute a public nuisance; and,

(C) Grant Plaintiffs their costs and disbursements; and,

(D) Grant Plaintiffs such other and further relief as the Court may deem appropriate.

XVI.

TWELFTH CLAIM FOR RELIEF

Defendants' Military Operations On and Around Vieques Violate The First and Fifth Amendments To the Constitution and Are Otherwise Unlawful

134. Plaintiffs reallege and incorporate by reference herein preceding paragraphs 1 through 133.

135. The island of Culebra is a Municipality of the Commonwealth of Puerto Rico and is approximately 10 miles from Vieques. Vieques and Culebra are within the Inner Range of the Atlantic Fleet Weapons Range of Defendants.

136. Defendants prior to about July 1975 conducted military operations on Culebra. On or about July 1975, Defendants ceased military operations on Culebra.

137. Military operations of Defendants on Vieques have increased since the time Defendants ceased military operations on Culebra.

138. Defendants have increased military operations on Vieques in whole or in part by transferring to Vieques directly or indirectly all or some of the military operations formerly conducted on Culebra.

139. Such increased military operations on Vieques are in whole or in part the result of, are due to, or have otherwise been caused or brought about by Defendants' termination of the use of Culebra for military operations.

140. Before terminating military operations on Culebra and on subsequent occasions, Defendants agreed with and otherwise made commitments to the Commonwealth of Puerto Rico not to transfer its Culebra military operations to Vieques.

141. The President of the United States as Commander-in-Chief ordered Defendants not to transfer military operations on Culebra to an alternate site in Puerto Rico without approval of the Commonwealth of Puerto Rico.

142. Defendants have neither requested nor obtained approval from the Commonweath of Puerto Rico to move military operations from Culebra to Vieques.

143. Defendants have transferred military operations from Culebra to Vieques without first evaluating the impact of such transfer of the life, liberty and property of the citizens of Puerto Rico.

144. Defendants have transferred military operations from Culebra to Vieques without conforming to Congressional restrictions.

145. Defendants are conducting on Vieques military operations formerly conducted on Culebra in violation of agreements and commitments that Defendants have made to the Commonwealth of Puerto Rico.

146. Defendants have conducted and continue to conduct on Vieques military operations formerly conducted on Culebra in the dangerous, harmful, disruptive, offensive and unlawful manner described in the First through Twelfth Claims for Relief of this Complaint.

147. Defendants have transferred military operations from Culebra to Vieques, as described in paragraphs 138 and 139 in violation of the President's Order and Congressional restrictions relating to any transferral of military activities from Culebra.

148. The transfer to Vieques of military operations formerly conducted on Culebra constitutes unlawful federal action.

149. Transferring to Vieques military operations formerly conducted on Culebra and conducting such military operations in the manner described in paragraphs 138 through 146 constitutes federal action that has caused and is causing irreparable harm to the health and welfare of residents of Vieques so as to constitute a denial of due process of law as guaranteed by the Fifth Amendment to the United States Constitution.

150. Transferring to Vieques of military operations formerly conducted on Culebra and conducting such military operations in the manner described in paragraphs 138 through 146 and without seeking the required approval of the Commonwealth of Puerto Rico constitutes arbitrary federal action that has caused and is causing irreparable harm to the health and welfare of residents of Vieques in violation of procedural due process of law as guaranteed by the Fifth Amendment to the United States Constitution.

151. Transferring to Vieques military operations formerly conducted on Culebra and conducting such military operations in the manner described in paragraphs 138 through 146 without seeking the required approval of the Commonwealth of Puerto Rico and without first evaluating the resulting impact of such federal action on the life, liberty and property of plaintiffs and without first giving an opportunity for public comment on such action and on alternatives to such action constitute arbitrary federal action contrary to law, including, *inter alia*, due process of law guaranteed by the Fifth Amendment to the United States Constitution.

152. Transferring to Vieques military operations formerly conducted on Culebra and conducting such military operations in the manner described in paragraphs 138 through 146 have deprived Plaintiffs of the value of their property so as to constitute a taking of property without just compensation, contrary to the Fifth Amendment to the United States Constitution.

153. Defendants' conducting of continuing and increased military operations on Vieques deprives, prevents, restrains and severely interferes with the ability of the residents of Vieques and others to use and to travel freely or without undue restraint around the public portions of the island of Vieques, including but not limited to its public beaches and the territorial sea of the Commonwealth of Puerto Rico.

154. The federal action taken as described in paragraph 153 constitutes a denial of freedom of travel as guaranteed by the First Amendment of the United States Constitution.

WHEREFORE, Plaintiffs request that this Court grant the following relief:

(A) Enter an Order declaring unlawful each of the actions described in paragraphs 135 through 154; and,

(B) Preliminarily and permanently enjoin Defendants from continuing each of the actions in paragraphs 135 through 154 until Defendants comply with the requirements of law; and,

(C) Grant Plaintiffs their costs and disbursements in this matter; and,

(D) Grant Plaintiffs such other and further relief as the Court may deem appropriate.

Respectfully submitted,

/s/ Miguel Gimenez Munoz
MIGUEL GIMENEZ MUNOZ
Secretary of Justice
Commonwealth of Puerto Rico
San Juan, Puerto Rico

/s/ Gerardo A. Carlo
GERARDO A. CARLO
Special Counsel to the Governor
Commonwealth of Puerto Rico
La Fortaleza
San Juan, Puerto Rico

/s/ John A. Hodges
JOHN A. HODGES
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

/s/ Timothy L. Harker
TIMOTHY L. HARKER
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
Attorneys for Plaintiffs

PEABODY, RIVLIN, LAMBERT & MEYERS
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

LEWIS A. RIVLIN
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
Of Counsel

JORGE L. CORDOVA, JR.
Office of the Commonwealth of Puerto Rico
1625 Mass. Ave., N.W.
Washington D.C. 20036
Of Counsel

VERIFICATION

Carlos Romero-Barceló, being first duly sworn, on oath does depose and state that he has read the foregoing Complaint, that he has knowledge of all the matters therein stated and that the same are true in substance and in fact, according to the best of his knowledge, information and belief.

/s/ Carlos Romero-Barcelo
CARLOS ROMERO-BARCELO

Subscribed and sworn to before me this 1st day of March, 1978.

/s/ Jose Manuel Rodriguez Viejo
Notary Public

My commission expires: ————————.

[SEAL]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil Action No. 78-323

CARLOS ROMERO-BARCELO, ET AL., PLAINTIFFS

v.

HAROLD BROWN, ET AL., DEFENDANTS

AMENDMENT TO COMPLAINT

TO THE HONORABLE COURT:

Come now plaintiffs in the above captioned case and through their undersigned attorneys hereby amend their complaint by amending paragraphs 46, 48, 49, 84, 85, 86 and 87 to read as set forth below and by adding to the complaint a thirteenth claim for relief as set forth below:

46. Section 301 (a) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1311(a), makes unlawful "the discharge of any pollutant by any person" except in compliance with a permit obtained pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

48. (a) Defendants operate a sewage treatment facility on Vieques subject to a National Pollution Discharge Elimination System ("NPDES") permit issued under Section 402 of the Act. The effluent discharge from said sewage treatment plant into the coastal waters of Vieques has been and continues to be in violation of said NPDES permit.

(b) Defendants, in the course of conducting military operations on and around Vieques, cause the discharge of munitions and other pollutants into the territorial sea and the contiguous zone surrounding the island, which discharge has, *inter alia*, resulted in soil erosion and the movement of sediment into the coastal waters of Vieques

thereby irreparably harming coral reefs and marine life.

49. Except for the NPDES permit for the sewage treatment plant, upon information and belief, Plaintiffs allege that neither Defendants nor those under their command have secured any permit from authorities that allows them to discharge pollutants into the territorial sea and contiguous zone surrounding Vieques.

84. The "Regulation for the Control of Solid Waste" of Puerto Rico requires as follows:

a. "No person shall establish or cause the establishment of any new solid waste facility without previously obtaining a permit from the Board." (Article 3.1.1).

b. "No person shall operate or cause the operation of a solid waste facility without applying to the Board for a permit to operate." (Article 3.1.2 A.1).

c. "No person shall operate or cause the operation of any new solid waste collection service without first obtaining a permit to operate from the Board." (Article 3.1.3).

d. "No person shall operate or cause the operation of an existing solid waste collection service without applying for a permit to operate such service, within 60 days of the effective date of this Regulation." (Article 3.1.3).

e. "No person shall cause or permit the occurrence of a solid waste activity . . . without first obtaining a permit from the Board." (Article 3.1.4).

f. "Storage of toxic, hazardous and pathological waste shall be handled in accordance with standards and guidelines of this Board." (Article 4.5).

g. "No person shall cause or permit land pollution. . ." (Article 2.1.1).

h. Land pollution is defined as:

"The presence in and on the land of any solid waste in such quantity, of such nature and duration,

or under such conditions as is or could be injurious to human health or welfare, animal or plant life, or property life, or property, or which interferes with the enjoyment of life or of such property, surface or underground waters, or creates air contaminants, or causes environmental degradation." (Article 1).

i. "No person shall cause or permit the deposit, storage or final disposal of solid waste at any place other than the following:"

> "At a final disposal site authorized by a permit. . ."
>
> "At a solid waste facility authorized by a permit. . ." (Article 2.1.3).

j. "No person shall cause or permit the abandonment of a junk vehicle. . ."

k. Daily operational records for sanitary landfills and submission of periodic reports to the Board are required. (Article 2.2).

l. Representatives of the Board shall ". . . have the right of entry to, upon, or through any premises in which a solid waste facility is located or in which any place required to be maintained under this Regulation is located." (Article 2.2.2).

85. Upon information and belief Plaintiffs allege as follows:

a. Defendants have established, maintained and operated one or more solid waste facilities on Vieques without required permits;

b. Defendants have previously operated a solid waste collection service and currently operate a new solid waste collection service on Vieques without the required permits;

c. Defendants have caused or permitted the occurrence of solid waste activities on Vieques without the required permits;

d. Defendants have stored, handled and otherwise disposed of toxic, hazardous and pathological waste on

Vieques without the required permits and otherwise contrary to standards and guidelines of the Board;

e. Defendant have caused or permitted land pollution on Vieques;

f. Defendants have caused or permitted the deposit, storage or final disposal of solid waste at unauthorized places on Vieques;

g. Defendants have caused or permitted the abandonment of junk vehicles on Vieques;

h. Defendants have failed to maintain required operational records and have failed to submit required periodic reports to the Board for its sanitary lanfill operations on Vieques;

i. Defendants have denied, prevented, and otherwise refused to permit entry by one or more authorized representatives of the Board to, upon or through premises on Vieques used by defendants as solid waste facilities or for solid waste disposal. Said denial of authorized access has occurred on or about March 6, 1978 and on other occasions.

86. In causing solid waste activities, disposing of hazardous waste and establishing and operating solid waste facilities and a solid waste collection service on Vieques without the permits required by the Board on Environmental Quality defendants are in violation of the Regulation for the Control of Solid Waste of Puerto Rico and the Resource Conservation and Recovery Act.

87. In causing or permitting land pollution, the deposit or final disposal of solid waste at unauthorized places, and the abandonment of junk vehicles on Vieques; in failing to maintain operational records, and submit periodic reports to the Board on Environmental Quality with respect to sanitary landfill operations on Vieques; and in denying access to solid waste disposal facilities by representatives of said Board defendants are in violation of the Regulation for the Control of Solid Waste of Puerto Rico and the Resource Conservation and Recovery Act.

XVII.

THIRTEENTH CLAIM FOR RELIEF

Defendants' Military Operations On and Around Vieques Violate the Marine Mammal Protection Act of 1972

155. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 154 inclusive.

156. Under the Marine Mammal Protection Act of 1972, 16 U.S.C. § 1361 et seq., except as otherwise provided in the Act, it is unlawful to "take" marine mammals. The term "take" means "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill any marine mammal." 16 U.S.C. § 1362(13).

157. The Secretary of Commerce in the case of porpoises and other cetaceans and pinnipediae (other than walruses) and the Secretary of Interior (in the case of other marine mammals) on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, is to prescribe such regulations with respect to the taking and importing of marine mammals as he deems necessary and appropriate to insure that such taking will not be to the disadvantage of the marine mammal species and population stocks and will be consistent with the purposes and policies of the Act. 16 U.S.C. § 1373(a). Such regulations are to be made on the record after an opportunity for an agency hearing on both the Secretary's determination to lift the prohibition of taking and on the regulations. 16 U.S.C. § 1373 (d). In addition to any other requirement of law with respect to agency rulemaking, the Secretary must publish and make available to the public either before or concurrent with the publication of notice in the Federal Register of his intention to prescribe such regulations:

> "(1) a statement of the estimated existing levels of the species and population stocks of the marine mammal concerned;

(2) a statement of the expected impact of the proposed regulations on the optimum sustainable population of such species or population stock;

(3) a statement describing the evidence before the Secretary upon which he proposes to base such regulations; and

(4) any studies made by or for the Secretary or any recommendations made by or for the Secretary or the Marine Mammal Commission which relate to the establishment of such regulations." 16 U.S.C. § 1373 (d).

158. The Secretary may issue permits that authorize the taking of marine mammals. 16 U.S.C. § 1374 (a). Any such permit shall:

"(1) be consistent with any applicable regulation established by the Secretary under section 1373 of this title, and

(2) specify

(A) the number and kind of animals which are authorized to be taken or imported.

(B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported,

(C) the period during which the permit is valid, and

(D) any other terms or conditions which the Secretary deems appropriate." 16 U.S.C. § 1374 (b).

159. On information and belief, military operations on and around Vieques result in the "taking" of marine mammals within the meaning of 16 U.S.C. § 1362 (13).

160. On information and belief, Defendants have not obtained a permit to take marine mammals on and around Vieques.

160. On information and belief, Defendants have not obtained a permit to take marine mammals on and around Vieques.

161. On information and belief, the Secretary has promulgated no regulations with respect to the taking of marine mammals on and around Vieques.

162. Defendants have violated the Marine Mammal Protection Act of 1972 in that they have unlawfully taken marine mammals on and around Vieques without a permit.

WHEREFORE, Plaintiffs request that this Court grant the following relief:

(A) Declare that Defendants are in violation of the Marine Mammal Protection Act of 1972; and

(B) Preliminarily and permanently injoin Defendants and their agents from engaging in military operations on or around Vieques until Defendants have complied with the requirements of the Marine Mammal Protection of 1972; and,

(C) Grant Plaintiffs their cost and disbursements; and,

(D) Grant Plaintiffs such further relief as the Court may deem appropriate.

Respectfully submitted,

/s/ Miguel A. Gimenez Munoz
MIGUEL A. GIMENEZ MUNOZ
Secretary of Justice
Commonwealth of Puerto Rico
San Juan, Puerto Rico

/s/ Gerardo A. Carlo
GERARDO A. CARLO
Special Counsel to the Governor
Commonwealth of Puerto Rico
La Fortaleza
San Juan, Puerto Rico

/s/ John A. Hodges
JOHN A. HODGES
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

/s/ Timothy L. Harker
TIMOTHY L. HARKER
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
Attorneys for Plaintiffs

PEABODY, RIVLIN, LAMBERT & MEYERS
1150 Connecticut Ave. N.W.
Washington, D.C. 20036

LEWIS A. RIVLIN
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

JORGE L. CORDOVA, JR.
Office of the Commonwealth of Puerto Rico
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036
Of Counsel

VERIFICATION

I, Carlos Romero-Barceló, being first duly sworn, on oath do depose and state that I have read the foregoing Amendment to Complaint, that I have knowledge of all the matters therein stated and that the same are true in substance and in fact, according to the best of my knowledge, information and belief.

/s/ Carlos Romero-Barceló
CARLOS ROMERO-BARCELO

Aff. No. 2,065

Subscribed and sworn to before me this 21 day of March, 1978.

/s/ Felix Fumero Pugliessi
Notary Public

[SEAL]

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Amendment To Complaint have on this 21st day of March, 1978, been served on Julio Morales Sánchez, Esq., U.S. District Attorney, San Juan, Puerto Rico; on Pedro J. Varela, Esq., Attorneys for Luis Medina, et al; and on Pedro J. Saade, Esq., Attorney for Carlos A. Zenón, et al, by first class mail, postage prepaid.

/s/ Miguel A. Gimenez Muñoz
MIGUEL A. GIMENEZ MUNOZ
Secretary of Justice
Commonwealth of Puerto Rico
San Juan, Puerto Rico

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 78-323

CARLOS ROMERO-BARCELO,
Governor of Puerto Rico, ET AL., PLAINTIFFS

v.

HAROLD BROWN,
Secretary of Defense, ET AL., DEFENDANTS

ANSWER

The defendants, Harold Brown, Secretary of Defense; W. Graham Claytor, Jr., Secretary of the Navy; James L. Holloway, Chief of Naval Operations; I. C. Kidd, Jr., Commander-in-Chief, Atlantic Fleet, United States Navy; and Louis H. Wilson, Commandant, United States Marine Corps, for their answer to the amended complaint filed herein plead as follows:

FIRST AFFIRMATIVE DEFENSE

Any and all actions by defendants, of which plaintiffs complain, were done by them as officials of the United States Department of Defense or United States Department of the Navy, in the course of their official duties and were within the scope of those duties, and for this reason they cannot be sued in their individual capacities.

SECOND AFFIRMATIVE DEFENSE

This Court lacks jurisdiction over the persons of defendants in their individual capacities.

THIRD AFFIRMATIVE DEFENSE

Defendants, not having been served personally with process in a proper manner, are not properly before this Court as parties in their individual capacities.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' First, Second, Third, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, Twelfth, and Thirteenth Claims for Relief fail to state claims upon which relief can be granted.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff Radames Tirado Guevara lacks standing to raise his Fourth Claim for Relief.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' Sixth and Eleventh Claims for Relief are barred by the doctrine of laches as the result of the passage of time and resulting prejudice to the defendants, to the Federal Government, and to the general public.

SEVENTH AFFIRMATIVE DEFENSE

This Court lacks jurisdiction over plaintiffs' Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Claims for Relief because of plaintiffs' failure to comply with applicable statutory notice provisions.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to exhaust their administrative remedies relative to their Fourth Claim for Relief. Plaintiffs have also failed to exhaust the administrative remedies prescribed by the Federal Tort Claims Act for all their claims sounding in tort.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' Fourth and Tenth Claims for Relief do not present a case or controversy ripe for judicial resolution.

TENTH AFFIRMATIVE DEFENSE

Even if the Puerto Rican public nuisance statute were construed to be a "state . . . requirement respecting control and abatement of environmental noise" within the

context of the Noise Control Act of 1972, such a requirement would be unconstitutionally void for vagueness.

ELEVENTH AFFIRMATIVE DEFENSE

This Court lacks subject matter jurisdiction over plaintiffs' Fourth, Fifth, Sixth, Eleventh, and Thirteenth Claims for Relief, those portions of plaintiffs' Ninth Claim for Relief alleged under Executive Order 11593, and all claims for the award of costs and attorneys' fees except where specifically authorized by statute.

TWELFTH AFFIRMATIVE DEFENSE

The defendants answer the numbered paragraphs of the complaint as follows:

1. This paragraph contains plaintiffs' characterization of their action to which no answer is required, but insofar as an answer may be required, denied.

2. Denied.

3. This paragraph contains conclusions of law to which no answer is required, but insofar as an answer may be required, denied.

4-5. Admitted.

6. This paragraph contains a conclusion of law to which no answer is required.

7-8. Admitted.

9. Admitted, except to deny that defendant Harold Brown is before the Court in his individual capacity.

10. Admitted, except to deny that defendant W. Graham Claytor is before the Court in his individual capacity.

11. Admitted, except to deny that defendant James L. Holloway is before the Court in his individual capacity.

12. Admitted, except to deny that defendant I. C. Kidd, Jr. is before the Court in his individual capacity.

13. Admitted, except to deny that defendant Louis H. Wilson is before the Court in his individual capacity.

14. This paragraph contains a conclusion of law to which no answer is required.

15. Admitted.

16. Admitted, except to state that defendants are without knowledge or information sufficient to form a belief as to the presence, if any, of endangered species or the degree, if any, to which birds, horses, and marine life are supported by coral reefs, mangrove swamps, marine grasses, and beach habitats.

17. Admitted.

18. The first sentence is admitted. The second sentence is denied, as the major portion of the Navy's property on the island is utilized only as a buffer zone for safety reasons. The last sentence is admitted, except to deny that more than a limited portion of the coastal waters surrounding the island is utilized for the described purposes.

19. Denied.

20. The first two sentences are denied, except to admit that some coastal waters around Vieques are periodically utilized for military operations. The third sentence is denied. The last sentence is denied, except to admit a few cattle have been killed by military operations when the animals were improperly present on restricted property owned by the United States.

21. Defendants are without knowledge or information sufficient to form a belief as to the precise nature or amount, if any, of water pollution; damage, harm, and danger alleged in this paragraph, except to deny the characterization of damage to the ocean waters as irreparable.

22. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, except to deny that the noise caused by the described operations is unreasonably destructive to the property, comfort, enjoyment, and health of plaintiffs, or unreasonably deprives plaintiffs of the full and normal enjoyment, use and value of their property.

23.-27. Denied

FIRST CLAIM

28. Defendants reallege and incorporate their answers to paragraphs 1 through 27 of the complaint.

29.-33. These paragraphs contain conclusions of law to which no answer is required, but insofar as an answer may be required, denied.

34. Denied, except to admit that defendants have assisted in the preparation of budget requests which contained funds for operations on Vieques, though not as discrete budget items, except to admit that Operation Springboard has been undertaken each year, and except to admit that Operation Solid Shield 78 was planned, but has now been cancelled.

35.-36. These paragraphs contain conclusions of law to which no answer is required, but insofar as an answer may be required, denied.

37. Denied.

38. Denied, except to admit that defendants have assisted in the preparation of budget requests which contained funds for operations on Vieques, though not as discrete budget items, and that no environmental impact statements were filed. Whether an environmental impact statement is required in such circumstances is a conclusion of law to which no answer is required, but insofar as an answer may be required to that averment, denied.

39. Denied, except to admit that no environmental impact statement has been filed.

40. This paragraph contains a conclusion of law to which no answer is required, but insofar as an answer may be required, denied.

41. This paragraph contains mixed averments of law and fact. All factual averments are denied. Insofar as an answer may be required to the legal conclusions contained in this paragraph, denied.

42. This paragraph contains a conclusion of law to which no answer is required, but insofar as an answer

may be required, denied, except to admit that they have no plans to cease military training operation on Vieques.

43. This paragraph contains conclusions of law to which no answer is required, but insofar as an answer may be required, denied.

The remaining paragraphs of plaintiffs' First Claim for Relief contain plaintiffs' prayer for relief to which no answer is required, but insofar as an answer may be required, denied.

SECOND CLAIM

44. Defendants reallege and incorporate their answers to paragraphs 1 through 43 of the complaint.

45.-47. These paragraphs contain conclusions of law to which no answer is required, but insofar as an answer may be required, denied.

48. (a) Denied, except to admit that defendants operate a sewage treatment facility on Vieques.

(b) Denied, except to admit that occasionally ordnance accidentally falls into the waters surrounding Vieques. Defendants are without knowledge or information sufficient to form a belief as to the precise environmental effects, if any, of such occurrences.

49. Admitted.

50. This paragraph contains a conclusion of law to which no answer is required, but insofar as an answer may be required, denied.

The remaining paragraphs of plaintiffs' Second Claim for Relief contain plaintiffs prayer for relief to which no answer is required, but insofar as an answer may be required, denied.

THIRD CLAIM

51. Defendants reallege and incorporate their answers to paragraphs 1 through 50 of the complaint.

52. This paragraph contains a conclusion of law to which no answer is required, but insofar as an answer may be required, denied.

53. Denied, except to admit that occassionally ordnance accidentally falls into the ocean waters around Vieques while defendants are conducting military training operations.

54. Denied, except to admit that occassionally ordnance accidently falls into the ocean waters around Vieques while defendants are conducting military training operations, and conducting military training operations, and except to state that defendants are without knowledge or information sufficient to form a belief as to the precise environmental effects, if any, of such accidental occurrences.

55. Denied, except to admit that occasionally ordnance accidentally falls into the ocean waters around Vieques, and that no permit has been issued by the Environmental Protection Agency.

56. This paragraph contains a conclusion of law to which no answer is required, but insofar as an answer may be required, denied.

The remaining paragraphs of plaintiffs' Third Claim for Relief contain plaintiffs' prayer for relief to which no answer is required, but insofar as an answer may be required, denied.

FOURTH CLAIM

57. Defendants reallege and incorporate their answers to paragraphs 1 through 56 of the complaint.

58.-65. These paragraphs contain conclusions of law to which no answer is required, but insofar as an answer may be required, denied.

66. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, except to deny plaintiffs' characterization of the alleged harm as irreparable.

67.-68. Defendants deny that oil, scum, or debris is released into the coastal waters of Vieques. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of these paragraphs.

69.-70. These paragraphs contain conclusions of law to which no answer is required, but insofar as an answer may be required, denied.

The remaining paragraphs of plaintiffs' Fourth Claim for Relief contain plaintiffs' prayer for relief to which no answer is required, but insofar as an answer may be required, denied.

FIFTH CLAIM

71. Defendants reallege and incorporate their answers to paragraphs 1 through 70 of the complaint.

72.-74. These paragraphs contain conclusions of law to which no answer is required, but insofar as an answer may be required, denied.

75. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

76. This paragraph contains a conclusion of law to which no answer is required, but insofar as an answer may be required, denied.

The remaining paragraphs of plaintiffs' Fifth Claim for Relief contain plaintiffs' prayer for relief to which no answer is required, but insofar as an answer may be required, denied.

SIXTH CLAIM

77. Defendants reallege and incorporate their answers to paragraphs 1 through 76 of the complaint.

78. Defendants are without knowledge or information sufficient to form a belief as to the precise level or effects, if any, of shock waves and noise caused by military operations on Vieques, except to deny plaintiffs' characterization of such noise as excessive and the interference caused as unreasonable.

79.-80. These paragraphs contain conclusions of law to which no answer is required, but insofar as an answer may be required, denied.

81. This paragraph contains mixed averments of law and fact. The factual averments are denied, except to

state that defendants are without knowledge or information sufficient to form a belief as to the precise nature and effects, if any, of shock waves and noise caused by military operations on Vieques. Insofar as an answer may be required to the legal conclusions contained in this paragraph, denied.

The remaining paragraphs of plaintiffs Sixth Claim for Relief contain plaintiffs' prayer for relief to which no answer is required, but insofar as an answer may be required, denied.

SEVENTH CLAIM

82. Defendants reallege and incorporate their answers to paragraphs 1 through 81 of the complaint.

83.-84. These paragraphs contain conclusions of law to which no answer is required, but insofar as an answer may be required, denied.

85. Denied, except to admit that defendants have operated and continue to operate a solid waste collection service and sanitary landfill without securing a permit, maintaining the operational record referred to, or submitting periodic reports, and except to admit that defendants refused to allow certain individuals to enter property owned by the Navy until those individuals presented credentials attesting that they were authorized representatives of the Board. Defendants presently are in the process of obtaining a permit and otherwise complying with Puerto Rican requirements respecting the described solid waste collection service and sanitary landfill, and authorized representatives of the Board have been allowed to enter Navy property since presenting their credentials.

86.-87. These paragraphs contain conclusions of law to which no answer is required, but insofar as an answer may be required, denied, except to admit that defendants have operated a solid waste collection service and sanitary landfill without a permit, without maintaining the operational records referred to, and without submitting

periodic reports to the Board. Defendants presently are in the process of securing a permit and otherwise complying with Puerto Rican requirements respecting the solid waste collection service and sanitary landfill.

The remaining paragraphs of plaintiffs' Seventh Claim for Relief contain plaintiffs' prayer for relief to which no answer is required, but insofar as an answer may be required, denied.

EIGHTH CLAIM

88. Defendants reallege and incorporate their answers to paragraphs 1 through 87 of the complaint.

89.-95. These paragraphs contain conclusions of law to which no answer is required, but insofar as an answer may be required, denied.

96. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

97. This paragraph consists of a single compound sentence which states a conclusion of law to which no answer is required. Insofar as separate allegations of fact are contained therein, they are denied. Defendants have been and are in the process of performing the actions this paragraph alleges they have not taken.

98. This paragraph contains a conclusion of law to which no answer is required, but insofar as an answer may be required, denied.

The remaining paragraphs of plaintiffs' Eighth Claim for Relief contain plaintiffs' prayer for relief to which no answer is required, but insofar as an answer may be required, denied.

NINTH CLAIM

99. Defendants reallege and incorporate their answers to paragraphs 1 through 98 of the complaint.

100.-104. These paragraphs contain conclusions of law to which no answer is required, but insofar as an answer may be required, denied.

105. Admitted.

106. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

107.-108. Denied, except to state that defendants are without knowledge or information sufficient to form a belief as to the precise effects, if any, of shock waves and noise generated by their military activities and operations upon the described buildings.

109.-112. These paragraphs contain conclusions of law to which no answer is required, but insofar as they contain averments of fact, they are denied, except to state that defendants are without knowledge or information sufficient to form a belief as to the precise effects, if any, of shock waves and noise generated by their military activities and operations upon the described buildings.

113. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

114.-115. Denied.

116. Denied.

117. Denied.

118. This paragraph contains a conclusion of law to which no answer is required, but insofar as an answer may be required, denied.

The remaining paragraphs of plaintiffs' Ninth Claim for Relief contain plaintiffs' prayer for relief to which no answer is required, but insofar as an answer may be required, denied.

TENTH CLAIM

119. Defendants reallege and incorporate their answers to paragraphs 1 through 118 of the complaint.

120. This paragraph contains a conclusion of law to which no answer is required, but insofar as an answer may be required, denied.

121. Admitted.

122. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

123. Defendants admit that there are certain inconsistencies between their military operations and the proposed program, but deny the remaining averments of this paragraph.

124. Denied.

The remaining paragraphs of plaintiffs' Tenth Claim for Relief containing plaintiffs' prayer for relief to which no answer is required, but insofar as an answer may be required, denied.

ELEVENTH CLAIM

125. Defendants reallege and incorporate their answers to paragraphs 1 through 124 of the complaint.

126. Denied, except to state that defendants are without knowledge or information sufficient to form a brief as to the precise environmental effects, if any, of their military operations.

127. Denied.

128. Denied, except to admit that occasionally ordnance accidentally falls into the waters adjacent to Vieques while military training operations are taking place. Defendants are without knowledge or information sufficient to form a belief as to the precise effects, if any, of such occasional occurrences on those who use said waters.

129. Denied.

130. This paragraph contains a conclusion of law to which no answer is required, but insofar as an answer may be required, denied.

131. Denied, except to admit that a few complaints about military operations have been received by defendants.

132. Denied, except to admit that defendants have no plans to discontinue their military training operations on and in the vicinity of Vieques.

133. This paragraph contains a conclusion of law to which no answer is required, but insofar as an answer may be required, denied.

The remaining paragraphs of plaintiffs' Eleventh Claim for Relief contain plaintiffs' prayer for relief to which no answer is required, but insofar as an answer may be required, denied.

TWELFTH CLAIM

134. Defendants reallege and incorporate their answers to paragraphs 1 through 133 of the complaint.

135. Admitted, except to deny that Culebra is within the Inner Range of the Atlantic Fleet Weapons Range.

136. Admitted.

137. Denied, the types of operations on Vieques have changed to an insignificant degree since the cessation of operations on Culebra, but there has been no increase in the level of military activity or operations on Vieques.

138.-140. Denied.

141. Denied, except to admit that Dr. Henry Kissinger of the National Security Council, acting for the President, directed that military operations be terminated on Culebra, and that the Secretary of Defense should consider and select alternative sites for weapons training activities. The selection of a new site, if it was in Puerto Rico, was contingent upon its being acceptable to the Commonwealth.

142. Admitted, except to deny that such operations have been transferred.

143. Denied.

144.-145. These pargaraphs contain conclusions of law to which no answer is required, but insofar as an answer may be required, denied.

146. Denied.

147.-152. These paragraphs contain conclusions of law to which no answer is required, but insofar as the paragraph contains averments of fact, they are denied.

153. Denied.

154. This paragraph contains a conclusion of law to which no answer is required, but insofar as an answer may be required, denied.

The remaining paragraphs of plaintiffs' Twelfth Claim for Relief contain plaintiffs' prayer for relief to which no answer is required, but insofar as an answer may be required, denied.

THIRTEENTH CLAIM

155. Defendants reallege and incorporate their answers to paragraphs 1 through 154 of the complaint.

156.-159. These paragraphs contain conclusions of law to which no answer is required, but insofar as an answer may be required, denied.

160. Denied, except to admit that no permit has been obtained.

161. Admitted.

162. This paragraph contains a conclusion of law to which no answer is required, but insofar as an answer may be required, denied.

The remaining paragraphs of plaintiffs' Thirteenth Claim for Relief contain plaintiffs' prayer for relief to which no answer is required, but insofar as an answer may be required, denied.

The defendants hereby specifically deny each and every allegation of the complaint not otherwise answered.

Wherefore defendants deny that plaintiffs are entitled to the relief prayed for in their complaint, and request that the complaint be dismissed.

Respectfully submitted,

JAMES W. MOORMAN
Assistant Attorney General

/s/ Julio Morales-Sanchez
JULIO MORALES-SANCHEZ
District of Puerto Rico
United States Attorney

/s/ Dorothy R. Burakreis
DOROTHY R. BURAKREIS
Attorney, Lands and Natural Resources Division
Department of Justice
Washington, D.C. 20530
Attorney for the United States

Dated: May 17, 1978

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that a true copy of the foregoing motion has been mailed on this date to Geradro A. Carlo, Esquire, Special Counsel to the Governor, Commonwealth of Puerto Rico, La Fortaleza, San Juan, P.R.; John A. Hodges, Esquire, 1150 Connecticut Ave. N.W., Washington, D.C. 20036; Pedro J. Saade Llorens, Esquire, Puerto Rico Legal Services, Inc., Environmental Quality Unit, Box 9134, Santurce, P.R. 00908; Judith Berkan, Esquire, Calle Mayaguez # 212, Apt. 3-B, Hato Rey, P.R. 00917; Wilfredo A. Geigel, Esquire, P.O. Box. 9187, Santurce, P.R. 00908.

/s/ Julio Morales Sanchez
JULIO MORALES SANCHEZ
United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil Action No. 78-323

CARLOS ROMERO-BARCELO,
Governor of Puerto Rico, ET AL., PLAINTIFFS

v.

HAROLD BROWN, ET AL., DEFENDANTS

Civil Action No. 78-377

LUIS MEDINA, ET AL., PLAINTIFFS

v.

HAROLD BROWN, ET AL., DEFENDANTS

SUPPLEMENTAL COMPLAINT

TO THE HONORABLE COURT:

Come now plaintiffs in the above-captioned case and through their undersigned attorneys hereby supplement their Complaint by adding the following at the end of Paragraph 2:

More than sixty days have passed (1) since plaintiffs filed their Complaint and (2) since they notified, by means of, *inter alia*, their "Further Notice of Ongoing Violations," the Secretaries of Defense, the Navy, Interior and Commerce, the Administrator of the Environmental Protection Agency, the Regional Administrator for E.P.A. Region II, the Commandant of the Marine Corps, the Chief of Naval Operations and the Commander in Chief of the United States Atlantic Fleet that military operations on Vieques are in violation of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et. seq.*; the Marine Protection Research and Sanctuaries Act, 33 U.S.C. § 1401, *et. seq.*, the Clean Air Act, as amended, 42 U.S.C. § 7401 *et. seq.*; the Noise Control Act, 42 U.S.C. § 4911, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6091, *et seq.*; the

Endangered Species Act, 16 U.S.C. § 1540, *et seq.*; and regulations promulgated thereunder.

Respectfully submitted,

/s/ Miguel Gimenez Munoz
MIGUEL GIMENEZ MUNOZ
Secretary of Justice
Commonwealth of Puerto Rico
San Juan, Puerto Rico

/s/ Gerardo A. Carlo
GERARDO A. CARLO
Special Counsel to the Governor
Commonwealth of Puerto Rico
La Fortaleza
San Juan, Puerto Rico

/s/ John A. Hodges
JOHN A. HODGES
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

/s/ Timothy L. Harker
TIMOTHY L. HARKER
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
Attorneys for Plaintiffs

PEABODY, RIVLIN, LAMBERT & MEYERS
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

LEWIS A. RIVLIN
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
Of Counsel

JORGE L. CORDOVA, JR.
Office of the Commonwealth of Puerto Rico
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036
Of Counsel

Date: June 30, 1978.

EXCERPTS FROM PLAINTIFFS' PROPOSED FINDINGS OF FACT

Intensity of Navy Weapons Training on Vieques

11. Navy weapons fire against the land and waters of Vieques is intense. In 1977, in and around Vieques, the Navy:

a. dropped approximately five million pounds of ordnance (CRB Exh. 417, Answer to Interrogatory No. 23);

b. scheduled 1518 hours of air-to-ground training during which jet aircraft dropped 107,206 missiles and bombs and flew 3438 missions. Each mission involves multiple runs for each aircraft on and around the target. (CRB Exh. 417, Answer to Interrogatory No. 1.A);

c. scheduled approximately 1017 hours of NGFS training during which destroyers fired 8700 rounds of three-inch, five-inch and eight-inch ordnance (CRB Exh. 417, Answer to Interrogatory No. 1.B.);

d. scheduled approximately 40 hours of Marine artillery and amphibious training during which 225 artillery rounds were fired. Each amphibious operation involves multiple approaches and departures from the beaches of Vieques for each amphibious landing craft utilized. (CRB Exh. 417, Answer to Interrogatory No. 1.c.; Barr, Tr. 2802-03.)

12. The Navy has tremendously intensified the level of weapons firing against Vieques.

a. The Navy dropped approximately 922,000 pounds of ordance on or around Vieques in the last six months of 1973 and 3,886,000 pounds in the first six months of 1978. (CRB Exh. 417, Answer to Interrogatory No. 23.)

b. In 1970 the Navy fired against Vieques a total of approximately 35,000 missiles and bombs in air-to-ground training and approximately 1000 rounds in NGFS. (CRB Exh. 123.)

c. Between 1974 and 1977 the Navy increased by over 900 percent the number of 500 (MK82), 1,000 (MK83),

and 2,000 (MK84) pound bombs dropped on and around Vieques. (CRB Exh. 417, Answer to Interrogatory No. 25.b.)

d. Combined weapons training activity (training of NGFS and air-to-ground together) on Vieques increased from five hours in 1970 to 362 hours in 1977, while the level of combined training *decreased* on Culebra *from 1970 to 1975.* (CRB Exhs. 409 and 410.)

The Ordnance Fired at Vieques

13. The ordnance fired at Vieques are generally as follows:

a. Air-to-ground bombing and strafing uses live bombs generally of the following sizes: 2,000 pounds (945 lbs. TNT equivalent), 1,000 pounds (445 lbs. TNT equivalent), 500 pounds (192 lbs. TNT equivalent), and 250 pounds (100 lbs. TNT equivalent). Strafing and rocket fire utilize high explosive rockets and machine gun fire that the military considers "inert" ordnance. Air-to-ground bombing and strafing use other types of "inert" ordnance besides machine gun fire, some of which (*e.g.*, the 500 lb. "practice bomb") contains an explosive charge. (CRB Exh. 417, Answer to Interrogatory No. 23; Barr, Tr. 2877-78.)

• • • •

The Lack of Appropriate Safety and Environmental Restriction on the Manner in Which the Navy Bombards, Shells and Strafes Vieques.

15. The evidence shows lack of appropriate safety and environmental restriction on the manner in which the Navy bombards, shells and strafes Vieques:

a. Evidence abounds that the Navy frequently misses target areas causing great risk to safety and environmental destruction. (Findings *passim.*)[1] However, the Navy has no reliable knowledge of the frequency, range

or magnitude of its misses. In the brief period since the filing of this lawsuit plaintiffs were able to discover evidence of the following extraordinary misses.

1) On October 16, 1973 a Navy destroyer overshot the AIA sending a live projectile approximately six miles to the northeast of Vieques. That projectile landed in the vicinity of a private vessel. (Court's Exh. 6.)

2) In June 1976 a 2,500 pound missile misfired and landed near the town of Isabel Segunda. (CRB Exh. 154.) This missile possesses the speed range of 350 to 550 knots. (CRB Exh. 37; CRB Exh. 417, Interrogatory Answer 185; CRB Exh. 154; Barr, Tr. 2909-10.) The Navy defines this drone missile as being "inert" by virtue of the same criteria utilized to conclude that machine-gun bullets and certain other rockets, bombs and missiles fired at Viques are inert, *i.e.*, it allegedly does not contain an explosive warhead, although some "inert" ordinance do contain an explosive charge and other chemical composition. (CRB Exh. 417, Answer to Interrogatory No. 23 a.)

3) Admiral Kinnear testified that the miss potential for air-to-ground bombing is in terms of miles. (Kinnear, Tr. 3274-75.)

4) Former Range Commander Barr testified that NGFS shells and air-to-ground bombs are fired at Vieques that are "lost," *i.e.*, no one knows where they went. (Barr, Tr. 2956.) He testified that he is personally aware of a four-mile NGFS overshot. (Barr, Tr. 2957.)

5) Range Officer Lee testified that during air-to-ground bombing, bombs are also lost, *i.e.*, no one knows where they went. (Lee, Tr. 6392.) Lee also testified that during air-to-ground bombing, if, for example, one aircraft drops five or six bombs during one approach, if any *one* bomb hits the target area, the Navy scores the run as a "hit" even if the other bombs miss the target. During the October 18, 1978 site visit by the Court one

such incident was observed in which a bomb was dropped into the coastal waters but was not scored as "off-target" because *other* bombs dropped in that run on the target hit the target area. (Lee, Tr. 6392.)

6) The Navy admits that:

> "However, in view of the large amount of live ordnance dropped in the water in the Surface Danger Area surrounding eastern Vieques and the resultant amount of unexploded ordnance ending up on the ocean bottom, it should be considered paramount for safety that steps be taken to forbid at all times, diving, anchoring, botton. fishing and trapping within at least one mile of the Vieques coast inside the Surface Danger Area." (CRB Exh. 233, Encl. 1 p. 5.)

* * * *

Defendants Have Admitted Damaging Effects With Respect to The Reefs of Vieques.

114. Defendants have admitted that continued and expanded range use on Vieques "would cause a subtle and adverse impact to the total marine environment of these [Vieques] waters." (FAAH Exh. 15, p. 3-104.)

115. Defendants have also admitted the potential for a sediment problem with respect to a runoff of sediment from the impact area affecting the marine environment, including coral. Thus, they have admitted that the deeper slopes within the impact area are subject to erosion initiated by ordnance impacts. (FAAH Exh. 15, p. 3-89.) They then went on to admit that:

> "Surface runoff from these areas would tend to increase sediment-loading in the island's peripheral lagoons and other coastal waters with resultant environmental damage to aquatic marine ecology, *espe-*

cially the coral reef systems." (Emphasis added.) (*Id.*)

* * * *

"Continuous detonation of explosives above or below surface target areas will eventually cause pulverization of soil with resultant erosion from wind and surface waters. This would limit the restoration of growth in these areas. . . . Aerial and ship-to-shore bombardment of impact zones is usually accompanied by some ordnance falling long or short of the target areas. The potential adverse impact from this threatens damage to thalassia grass beds and mangrove zones. . . . Direct fish kills from the impact of stray ordnance may be expected, however, a more serious consequence is the long-term damage to aquatic life forms resulting from the explosive destruction of habitat, turbidity that reduces the photosynthesis in turtle grass zones and the sedimentation of live coral systems." (FAAH Exh. 15, p. 3-94.)

Defendants have also admitted that a transfer from Culebra to Vieques would result in *irreparable* damage to coral reefs. "Although much of the resulting ecological damage may be repaired by nature in time, *some damage to coastal zones, and reef systems in particular, is irreparable.*" (Emphasis added.) (FAAH Exh. 15, p. 3-115.)

116. Defendants' own maps and written materials admit specifically that reef and water areas around the eastern portion of Vieques are saturated with ordnance. For example, defendants admit in a map they prepared in 1978 that the northeast coast of Vieques, including its waters and reef areas from Punta Este to a point approximately half way between Puerto Diablo and Punta Goleta, is "saturated" with ordnance. (CRB Exh. 181, Appendix 1 hereto.) They also admit that the south coast of Vieques, including water and its reef areas from

Punta Este to a point in the ocean just east of Laguna Matias is "saturated" with ordnance. (*Id.*) This "saturated" area includes Roca Alcatraz and most of Cayo Conejo. In addition, in the same map defendants admit that ordnance might be present almost to Punta Goleta on the north and to the middle Ensenada Honda in the south. (CRB Exh. 181.)

117. Defendants admit that large areas within the "saturated" areas mentioned above are "super-saturated" with ordnance. During the April 10, 1978 hearing before this court, defendants introduced a map, which indicated 10 areas marked "A," "B," "C," "D," "E," "F," "G," "H," "I" and "J". (Exh. 1, at April 10, 1978, hearing (hereafter "April 10 Exh. 1") (Appendix 2 hereto); see transcript of April 10, 1978 hearing (hereinafter "April 10 Tr. at 113-151.) This exhibit was sponsored by the defendants with extensive supporting testimony. Defendants specifically characterized these as "super-saturated." (April 10 Tr. 118-119.) These 10 areas include and/or border on important coral reefs on the eastern end as depicted on April 10 Exh. 1. Each area is discussed below:

a. Supersaturated *Area "A"* is a trapezoidal area that covers most of Bahia, Salina del Sur, including reefs on its eastern portion. Area "A" extends out to Roca Alcatraz. (April 10 Exh. 1; April 10 Tr. 124-125.) As stated by a Navy witness during examination with respect to Area "A:"

> "Q. Why is such a large area covered in A as being extremely dangerous?
>
> A. *What we have gone by on here is our previous experiences and observations in the past along with A, as we have been in that area, and it was saturated with 2,000 pound bombs and 15,000 pound bombs.*
>
> *I am sorry—1,000 pound bombs the last time I was there.*

Q. *And that includes all the way up to [R]oca Alcatraz?*

A. *That is correct.*" (Emphasis added.) (April 10 Tr. 134-135.)

b. Supersaturated *Area "B"* extends from the fore-reef edge of the reef at Punta Icacos, thence west to the northern portion of Puerto Diablo, including reefs at Puerto Diablo as depicted on defendants' exhibit. (April 10 Exh. 1; April 10 Tr. 130-131.)

c. Supersaturated *Area "C"* covers almost the entire Bahia Icacos and includes Isla Yallis. It includes portion of or touches on three reef areas as depicted on the defendants' exhibit. The Navy witness indicated specifically that ordnance covers "the entire area C." (April 10 Exh. 1; April 10 Tr. 135.)

d. Supersaturated *Area "D"* covers Laguna Anones as well as land areas and a portion of Bahia Salina del Sur near its northeastern shore. (April 10 Exh. 1.)

e. Supersaturated *Area "E"* includes Bahia Salinas on the north of Vieques. It includes or touches three reef areas as depicted on the defendants' exhibit. (April 10 Exh. 1; April 10 Tr. 136.)

f. Supersaturated *Area "F"* is on land just to the east of Laguna Anones. (April 10 Exh. 1; April 10 Tr. 136.)

g. Supersaturated *Area "G"* borders Area "A" in and includes a portion of Bahia Salina del Sur that contains a reef as depicted on defendants' exhibit. (April 10 Exh. 1; April 10 Tr. 137-138.)

h. Supersaturated *Area "H"* is on land to the east of Laguna Anones. (April 10 Exh. 1; April 10 Tr. 138.)

i. Supersaturated *Area "I"* is on land near Penasco Fosil and borders the reef there as depicted on defendants' exhibit. (April 10 Exh. 1; April 10 Tr. 138-139.)

j. Supersaturated *Area "J"* touches a reef just to the east of Punta Salinas, includes another reef farther to the east, and borders another reef somewhat farther to the east. (April 10 Exh. 1; April 10 Tr. 138-139.)

118. Additional documents prepared by defendants indicate the presence of ordnance all the way to south of Cayo Conejo. (See CRB Exh. 212, ¶ 12; CRB Exh. 232; CRB Exh. 233, Encl. 1, p. 5; Finding 15(a)(6).)

* * * *

Evidence Introduced at Trial Confirms the Existence of Military Damage to The Reefs of Vieques.

120. Items discovered in the waters of Vieques near the reefs include metal fragments of airborne bombs, artillery shells, practice ordnance, parachutes, parachute cables, flares, flaring casings, barges and other military vessels, machine gun rounds, bazooka rockets and many unidentifiable ordnance fragments. (*See, e.g.*, G. Cintron, Tr. 1782-1786, 1805-1808, 1813, 1817, 1819-1820, 1830, 1954; CRB Exhs. 312, 313 (large caliber machine gun rounds), 314 (metal).)

121. Mr. Cintron described some of the kinds of damage caused by such military activities on Vieques:

a. Shells that detonate in the vicinity of the reef cause shearing and cleavage of coral structures, thereby exposing the internal structure of the coral to predatory organisms. (G. Cintron, Tr. 1786-1787, 1794, 1795, 1807, 1941.) Damage to corals, for example, opens the way to the growth of blue-green algae, which has concerned many scientists because of a possible link to ciguatera, a type of fish poisoning. (G. Cintron, Tr. 1795.) Two species of coral found off of Vieques, acropora palmata and the columbus lobate form of montastrea annularis, are especially susceptible to damage from blasting, which tends to split the coral open. (Acropora plays an important role in providing shelter for turtles and fish. (G. Cintron, Tr. 1787.)) Colonies of these two species of coral have sustained widespread damage in areas that are very sheltered and not subject to wave motion. (G. Cintron, Tr. 1787, 1822.) The blasting also loosens coral, making them susceptible to toppling from movement of the water. (G. Cintron, Tr. 1783.)

b. Metal fragments that strike a reef cause both mechanical breakage and abrasions on the living skin of coral. Abrasions, by cutting the surface of the coral, increase its vulnerability to infections. Military debris and coral fragments broken off the reef can be moved by a swell and cause further damage to adjacent colonies. This has occurred on Vieques reefs. (G. Cintron, Tr. 1789, 1791, 1793, 1831, 1941-1950.)

c. Ordnance, military hardware and other heavy debris striking the ocean floor or detonating in the vicinity of a reef puts sediments into suspension, which are then transported by the current and deposited on nearby reefs. Sediment from blasting which is deposited on coral colonies tends to stay there, due to the slightly concave shape of the colonies. Sedimentation damages or kills living coral. A number of reefs off Vieques bear evidence of sedimentation damage. (G. Cintron, Tr. 1794, 1799, 1809, 1969.)

d. Shell fragments and other military debris that come to rest on the surface of a coral reef cause the death of underlying coral tissues by shading the coral from necessary sunlight and by impeding feeding mechanisms. Such dead areas are sites for infection. (G. Cintron, Tr. 1787-1793.)

e. The waters surrounding Vieques contain parachutes and shreds of parachute. (G. Cintron, Tr. 1784-1785; 1954, CRB Exh. 351) Parachutes that fall into the water and come to rest draped over coral colonies cause the death of all underlying coral tissues. (G. Cintron, Tr. 1792, 1821.)

122. Photographic evidence and accompanying testimony corroborates the existence of damage in the coral areas of Vieques. See, *e.g.*, CRB Exhs. 310(58), 310 (56), 310(57), 310(6); G. Cintron, Tr. 1802-1804 (highly disturbed reef areas in the north shore area, with bomb fragments); CRB Exh. 310(51), G. Cintron, Tr. 1805-1806 (recently-dropped drag fin in barrier reef in Bahia Salina del Sur; drag fins are "exceedingly com-

mon" in Bahia Salina del Sur); CRB Exh. 310(52), G. Cintron, Tr. 1806-1808 (area near Roca Alcatraz containing large circular holes in acropora palmata framework, sometimes more than 20 meters in diameter; aircraft-delivered object visible near large crater; "extensive" damage to reef); CRB Exhs. 310(30), 310(25), G. Cintron, Tr. 1808-1809 (drag fin in very disturbed barrier reef area in Bahia Salina del Sur); CRB Exh. 310(27), G. Cintron, Tr. 1809-1811 (large metal fragment in Bahia Salina del Sur; sediment damage); CRB Exh. 310(53), G. Cintron, Tr. 1812-1813 (ordnance [perhaps flare casing] in acropora palmata area); CRB Exhs. 310(31), 310(33), G. Cintron, Tr. 1813-1814 (flare casings and cables formerly attached to parachutes in coral areas); CRB Exhs. 310(50), 310(49), G. Cintron, Tr. 1814-1815 (metallic object, larger than a human being, resting on coral southwest of Roca Alcatraz); CRB Exhs. 310(19), 310(9), G. Cintron, Tr. 1816 (large piece of ordnance in reef in Bahia Salinas in north coast of Vieques; coral damage visible); CRB Exhs. 310(11), 310(4), G. Cintron Tr. 1816-1817 (large piece of ordnance in acropora palmata coral in Bahia Salinas in north coast of Vieques); CRB Exh. 310(44), G. Cintron, Tr. 1817 (round of "artillery" ordnance at reef near Punta Gato); CRB Exhs. 310(55), 310(54), G. Cintron, Tr. 1817-1818 (cratered reef area near Roca Alcatraz, large metal objects near craters); CRB Exh. 310(8), G. Cintron, Tr. 1819 ("artillery" shell lodged in reef crevice); CRB Exh. 310(20), G. Cintron, Tr. 1819-1820 (inert ordnance on reef off Punta Gato); CRB Exh. 310(29), G. Cintron, Tr. 1820 ("artillery" round in highly disturbed site near or at barrier reef on south coast of Bahia Salina del Sur); CRB Exhs. 310(47), 310(48), G. Cintron, Tr. 1820-1821 (parachutes draped around coral colonies thus killing the coral); CRB Exh. 310(3), G. Cintron, Tr. 1822 (effects of probable direct hit on massive colonies of monastrea annularis; coral colony split; pieces have lost their orientation and are ly-

ing on their side); CRB Exh. 310(45), G. Cintron, Tr. 1822-1823 (large colony of montastrea annularis cleaved by a blast); CRB Exh. 310(2), G. Cintron, Tr. 1823-1824 (crater off patch reef at Bahia Salinas in north of Vieques); CRB Exh. 310(42), G. Cintron, Tr. 1824-1825 (crack in reef framework); CRB Exh. 310(10), G. Cintron, Tr. 1826-1827 (coral rubble, including sheared coral blades); CRB Exh. 310(62), G. Cintron, Tr. 1828 (craters off northeast flank of Roca Alcatraz); CRB Exh. 310(61), G. Cintron, Tr. 1828 (sedimentation and coral rubble in barrier reef in Bahia Salina del Sur); CRB Exh. 310(22), G. Cintron, Tr. 1830 (living coral cover stripped from patch reef in north coast of Bahia Salinas; reef framework full of large cracks, rocks loose, metal fragment visible); CRB Exh. 310(14), G. Cintron, Tr. 1830-1831 (disturbed colony of montastrea annularis at barrier reef in Bahia Salina del Sur); CRB Exh. 310(15), G. Cintron, Tr. 1831 (large pieces of dislodged montastrea annularis in barrier reef in Bahia Salina del Sur); CRB Exh. 310(28), G. Cintron Tr. 1831 (dislodged colony of montrastrea annularis, more than 10 feet across); CRB Exh. 310(32), G. Cintron, Tr. 1831-1832 (metal fragment on top of colony of montastrea annularis); CRB Exh. 310(46), G. Cintron, Tr. 1832 (dead coral tissue and rust spots on coral tissue caused by metal fragment); CRB Exh. 310(13), G. Cintron, Tr. 1832 (large circular piece of metal lodged in large colony of montastrea annularis in Bahia Salina del Sur; abrasion to coral seen near metal object); CRB Exh. 310(12), G. Cintron, Tr. 1832-1833 (metal piece on coral in Bahia Salina del Sur with recently abraded, dead coral nearby); CRB Exh. 310(46), G. Cintron, Tr. 1833 (crater being filled with debris near base of reef in patch reef in Bahia Salinas in north of Vieques); CRB Exh. 310(42), G. Cintron, Tr. 1834 (sedimented coral head at base of reef in Bahia Salinas in north of Vieques); CRB Exh. 310(43), G. Cintron, Tr. 1835 (ordnance that defendants planned to blow up intention-

ally on coral reef near Isla Yallis on June 7, 1978 as part of their trial preparation); CRB Exh. 327(14), G. Clinton, Tr. 1851-1852 (holes in fringing reefs off Punta Gato); CRB Exh. 327(11), G. Cintron, Tr. 1853 (cratering in barrier reef in Bahia Salina del Sur); CRB Exh. 327(12), G. Cintron, Tr. 1853 (cratering in Bahia Salina del Sur); CRB Exh. 327(3), G. Cintron, Tr. 1854 (barge sunk at Roca Alcatraz; craters visible on reef slope); CRB Exh. 327(8), G. Cintron, Tr. 1854, 1855 (disturbed area with holes in area where there are large metal fragments); CRB Exh. 327(10), G. Cintron, Tr. 1854 (disturbed seagrass bed in proximity to patch reef off Punta Gato); see also CRB Exh. 336, G. Cintron, Tr. 1856-1860 (locations of certain damage found by plaintiffs during limited inspection of certain reef areas of Vieques).

* * * *

131. Defendants' other coral reef witness Raymond made several admissions about the deleterious effect Navy activities have with respect to the Vieques coral reefs. For example:

> (1) *"Periodic bombing and bulldozing in the Atlantic Fleet Weapons Range has removed a major portion of the vegetation in the eastern half of the drainage basin of Bahia Salina del Sur, undoubtedly increasing the erosion and deposition of sediments into Laguna Anones. The result has been that Laguna Anones is now a dry lagoon with standing water only in bomb craters, causing increased runoff of terrigenous sediments into Bahia Salina del Sur at the northeast corner of the bay. Evidence exists of recent channelling of sediment through a narrow gap through the beach during heavy rainfall."* (Emphasis added.) (Def. Exh. 83, pp. 33-34; Raymond, Tr. 6132.)
>
> (2) *"The fringing reefs on both sides of the north central cove in Bahia Salina del Sur have been ex-*

tensively bombed. Several craters in the reefs are visible in recent color aerial photos (flown August 1978 by the U. S. Navy)." (Emphasis added.) (Def. Exh. 83, p. 35; Raymond, Tr. 6134.)

(3) ". . . *The effect of occasional shortfalls and overfalls of bombs and projectiles on the marine environment is a subject of major concern to this investigation, from a sedimentologist's perspective. Close examination of several bomb craters up to 10 meters in diameter along the north coast of Punta Gato has revealed extensive sediment damage from explosions around the perimeters of the craters. The craters themselves have become partly filled with sand.*" (Emphasis added.) (Def. Exh. 83, pp. 33-35; Raymond, Tr. 6132-6133.)

132. Raymond acknowledged the existence of sediment on corals in Vieques. (Raymond, Tr. 6071; Def. Exhs. 82A (sediment on reef S-4 in Bahia Salina del Sur), 82B (sediment in reef S-4); Raymond Tr. 6082; Def. Exh. 82(1-3) (transects A-B); Def. Exh. 83, p. 12.) In addition, he admitted that sediment damage to Vieques coral has been a relatively *recent* occurrence:

* * * *

Defendants' Military Activities Damage Seagrass Communities on Vieques.

136. Defendants' military operations are damaging seagrass communities of Vieques.

137. Defendants have admitted harm and potential harm to seagrass and other aspects of the marine ecosystem on and around Vieques caused by their military operations:

"Continuous detonation of explosives above or below surface target areas will eventually cause pulverization of soil with resultant erosion from wind and surface waters. . . . This would limit the restoration of growth in these areas. Aerial and ship-to-shore

bombardment of impact zones is usually accompanied by some ordnance falling long or short of the target areas. *The potential adverse impact from this threatens damage to thalassia grass beds* and mangrove zones. Direct fish kills from the impact of stray ordnance may be expected, *however, a more serious consequence is the long-term damage to aquatic life forms resulting from the explosive destruction of habitat, turbidity that reduces the photosynthesis in turtle grass zones* and the sedimentation of live coral systems." (Emphasis added.) (FAAH Exh. 15, p. 3-94.)

138. Defendants' expert Joseph Zieman stated that there is "no question" that the naval activities on Vieques have had an impact on the seagrass communities. The craters in the seagrass beds are the evidence of this fact. (Def. Exh. 95 [Zieman Report], pp. 42-43.) The explosion of a bomb in and above seagrass beds physically removes the grass. (Zieman, Tr. 6643-6644.) In addition, when a bomb hits, sediment is thrown out, the rhizome system is destroyed or completely removed. (Zieman, Tr. 6630-6631.) Zieman noted circular holes in the seagrass beds, best illustrated, he said, north of Punta Gato where the sediment was ripped up and torn out as if "someone had taken a giant cookie cutter and removed the center of the bed and there was the hole." (Def. Exh. 95, pp. 42-43; Zieman Tr. 6650.) Zieman also testified that there has been considerable bombing damage in the marine bottom in the eastern part of Bahia Salina del Sur. (Zieman, Tr. 6651.) Zieman acknowledged that the number of craters have increased in the Punta Gato area since 1972. (Def. Exh. 95, p. 44; Zieman, Tr. 6682, 6687.) It is Zieman's opinion that there has been an increase in bombing damage right off the mock runway. (Zieman, Tr. 6688; see also CRB Exhs. 355-A, 355-B, 355-C; Jimenez, Tr. 4054-4056.)

139. Other evidence confirms the existence of damage to the seagrass beds. Plaintiffs' witness Vance Vicente confirmed that there are numerous circular disrupted

zones or craters within the thalassia beds on both Bahia Salina del Sur and Bahia Icacos. (Vicente, Tr. 2063.) From aerial photography it is apparent that the number of craters in the seagrass plateau at Punta Gato have at least tripled from 1972 to 1978 (an increase from 5 in 1972 to 15 in 1978). (CRB Exhs. 316, 317; Vicente, Tr. 2065, 2067-2072.) Additional holes may not be apparent since some holes can serve as traps for seagrass, detritus and algae and thus may not show up clearly in aerial photographs. (CRB Exh. 316, 317; Vicente, Tr. 2067-2068, 2072.)

140. There is sediment disturbance in Bahia Icacos and Punta Gato. This seriously damages seagrass beds because disturbance of sediment changes not only the physical, but also the chemical, properties affecting seagrasses. (Vicente, Tr. 2118.) This type of sediment disturbance can deteriorate into "blow-outs," therefore making these seagrass beds prone to erosion. (Vicente, Tr. 2063; 2083-2086.) In addition to the present damage that these craters represent, the occurrence of a severe storm or an extreme high wave energy period could cause damage to the plateau by erosion. (Vicente, Tr. 2085-2086.) These disrupted cratered areas are expected to have a long-lasting effect on seagrass communities and the marine environment generally, since thalassia rhizomes do not propagate rapidly. (Vicente, Tr. 2063-2064.)

141. An additional problem caused by the destruction of seagrasses around Vieques is that highly nutritive seagrass such as thalassia are being replaced by calcareous green algae such as halimeda, which have almost no nutritive value and which are not as good sediment stabilizers as seagrasses. (Vicente, Tr. 2063, 2103-2104; Zieman, Tr. 6630-6631.)

142. The growth of seagrass is impaired by run-off from the land caused by defendants' bombing. Inland vegetation stabilizes the soil and the sediment in land. When the vegetation is removed, the soil becomes de-

stabilized. Periods of rain and wind transport sediment into the water column causing an increase in turbidity. This increased turbidity diminishes light penetration in the water column which, in turn, limits the depth to which seagrasses can grow. (Vicente, Tr. 2083.)

143. Photographic evidence and accompanying testimony bears out the existence of damage to seagrass areas. See, *e.g.*, CRB Exh. 319(1), Vicente, Tr. 2099 (ordnance found in in Bahia Salina del Sur, causing sediment disruption); CRB Exh. 319(3), Vicente, Tr. 2099 (results of ordnance firing); CRB Exh. 319(5), Vicente, Tr. 2100-2101 (piece of ordnance at in Punta Gato, which has penetrated into the sediment and caused sediment disruption around it on the seagrass plateau); CRB Exh. 319(7), Vicente, Tr. 2101 (crater in Bahia Icacos showing sediment disruption); CRB Exh. 319(9), Vicente, Tr. 2102 (metal fragment found at crater in seagrass bed in Punta Gato, causing large sediment disruption); CRB Exh. 319(12), Vicente, Tr. 2103 (crater at Punta Gato; rolled up leaves of seagrasses, principally thalassia inside crater; vegetation surrounding this crater is a calcareous green algae); CRB Exh. 319(13), Vicente, Tr. 2104 (edge of crater showing exposed rhizomes); CRB Exhs. 319(14), 319(15), Vicente, Tr. 2106 (bombs at Punta Gato, causing disruption of substrate; principal vegetation is calcareous algae); CRB Exh. 319(16), Vicente Tr. 2106-2107 (crater in Punta Gato with a bomb lying over thalassia bed; calcareous green algae evident); CRB Exh. 310(46), Vicente, Tr. 2108-2110 (craters on north coast of Vieques; existence of rolled up leaves tends to make crater less visible from aerial photography); CRB Exh. 325, Vicente, Tr. 2109-2110 (craters and substantial sediment disruption); CRB Exh. 310(20), Vicente, Tr. 2110 (bomb lying on marginal zone that divides crater from seagrass bed plateau); CRB Exh. 320(7), Jimenez, Tr. 2113 (metal fragment found under leaves on the seagrass bed pleateau at Punta Gato); CRB Exh. 320(4); Vicente, Tr. 2118

(shell fragment); CRB Exh. 323(1); Vicente, Tr. 2119-2120 (three to four coral patches on the western side of Bahia Icacos, covered by algae detritus [brown algae and calcareous green algae] instead of coral); CRB Exh. 323(2), Vicente, Tr. 2120-2121 (coral patch in the eastern point of Punta Gato; dead thalassia rhizomes); CRB Exh. 323(3), Vicente, Tr. 2121 (Mortar shell in Bahia Salina del Sur); CRB Exh. 323(4), Vicente, Tr. 2122-2123 (dead coral rubble in Bahia Salina del Sur); CRB Exh. 323(5), Vicente, Tr. 2124 (ordnance found commonly in Bahia Salina del Sur); CRB Exh. 323(6A), Vicente, Tr. 2124-2125 (mortar shell in Bahia Salina del Sur); CRB Exh. 323(6B), Vicente, Tr. 2125 (luminous flare covered with fine sediment); CRB Exhs. 318(1A), 318(B), 318(C); Vicente, Tr. 2126-2127 (common ordnance, including 500 lb. bomb, found at Punta Gato); CRB Exh. 318(2), Vicente, Tr. 2129 (ordnance at Punta Gato and Bahia Icacos); CRB Exhs. 329(1), 329(2), 329(3), Vicente, Tr. 2130 (craters, dead thalassia leaves trapped in craters, and large amount of calcareous green algae surrounding craters).

The Evidence Indicates that the Disturbance on the East End of Vieques is Reducing Fish Populations There

144. The disturbance on Vieques has adversely affected fish populations in its seagrass beds. Dr. Zieman collected fish from the seagrass beds on the east end of Vieques and compared this information with data collected from Tague Bay on the east end of St. Croix. Dr. Zieman believes that Tague Bay serves as a reasonable comparison for the fish data from Vieques. Grassbeds fish were sampled at each of the stations where seagrass production was measured. Dr. Zieman found as follows: twenty-five species collected in Vieques and 35 at St. Croix; and total fish numbers are "vastly different" in Vieques and St. Croix. (Def. Exh. 95, p. 34.) Species diversities are generally lower for samples col-

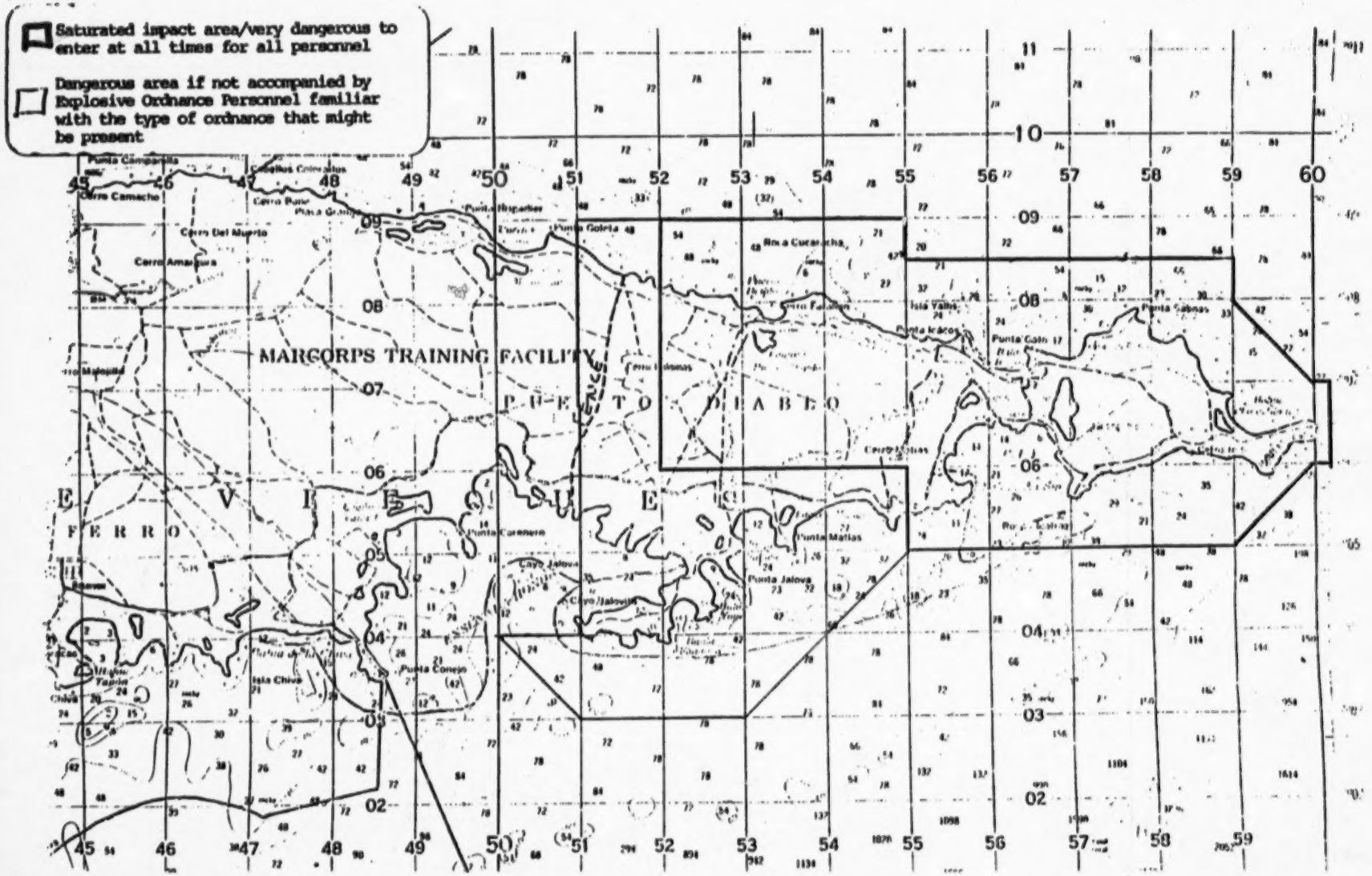
lected in Vieques grassbeds than those determined for Tague Bay grass communities, and total numbers of fish are "much lower" in Vieques when compared to similar data from Tague Bay. (*Id.*, p. 39.) Also the mean values for Vieques at 8.6 percent of daily production of seagrass grazed are lower than the grazing rate at St. Croix of 14.2 percent; this lower grazing rate corresponds strongly to the reduced numbers of grassbed fish in Vieques. (*Id.*, p. 40.) Dr. Zieman acknowledged that losses with respect to fisheries resources resulting from losses of seagrass beds can be considerable. (Zieman, Tr. 6668.) His data gathered on Vieques and St. Croix confirms this.

It Will Take a Considerable Amount of Time for the Damaged Seagrass on Vieques to Recover, If They Recover at All; Continued Bombing and Shelling Means Continued Stress and the Risk of a "Collapse" of Seagrass Areas.

145. If disturbed or destroyed, seagrass will take a long time to recover. (Zieman, Tr. 6669). While Dr. Zieman indicated that seagrass beds can recover, "the process sometimes takes considerable time. . . [T]he damaged areas must first sediment in. Sediment must return to the area and then certain chemical processes must take place to enable the rhizomes to grow back into the region." (Zieman, Tr. 6644.) Thalassia has not recolonized many of its former areas in southern Florida and in the Caribbean even 50 years after it has been removed. (Vicente, Tr. 2065; Zieman, Tr. 6662.) Many areas of thalassia have not recovered after many years following dredging operations. (Zieman, Tr. 6668.) In one experiment, thalassia beds denuded of leaves and rhizomes were not subsequently recolonized. (Vicente, Tr. 2064.) Tracks resulting from propellers have persisted for 2-5 years. (Vicente, Tr. 2064-2065.) Shot holes in seagrass beds in British Honduras, caused by oil explosives, could still be seen in aerial photographs after

10-15 years; they were colonized by calcareous green algae. (Vicente, Tr. 2064.) According to Zieman, the best estimates at this time indicate that at minimum, two years are normally required for recolonization even to commence. According to Zieman, in some instances, recolonization has not occurred for 17 years after discrete, identifiable disturbances. Zieman said that the eastern part of Bahia Salina del Sur could take 10 years or longer to recolonize and Punta Gato would normally need 4-6 years (Zieman, Tr. 6680), *assuming no further disturbance.* (Zieman, Tr. 6681.)

146. According to Zieman, at the slow recovery rate of seagrass, cessation of the bombing at Vieques would be the best and quickest way to ensure recovery of the Vieques seagrass. (Zieman, Tr. 6681.) A continuation at the present level of bombing would mean a continued stress on the community. (Zieman, Tr. 6681.) Any system can take only a certain amount of stress before a collapse occurs, he said. For systems such as seagrass beds, he said, the level required to induce this collapse is not known except for very few stresses, such as thermal pollution. He concluded that the seagrass meadows on Vieques can be productive and functioning areas only if the stress is curtailed by changes with respect to military activity there. (Def. Exh. 95, p. 44.)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Cerro Amargura
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Punta Icacos
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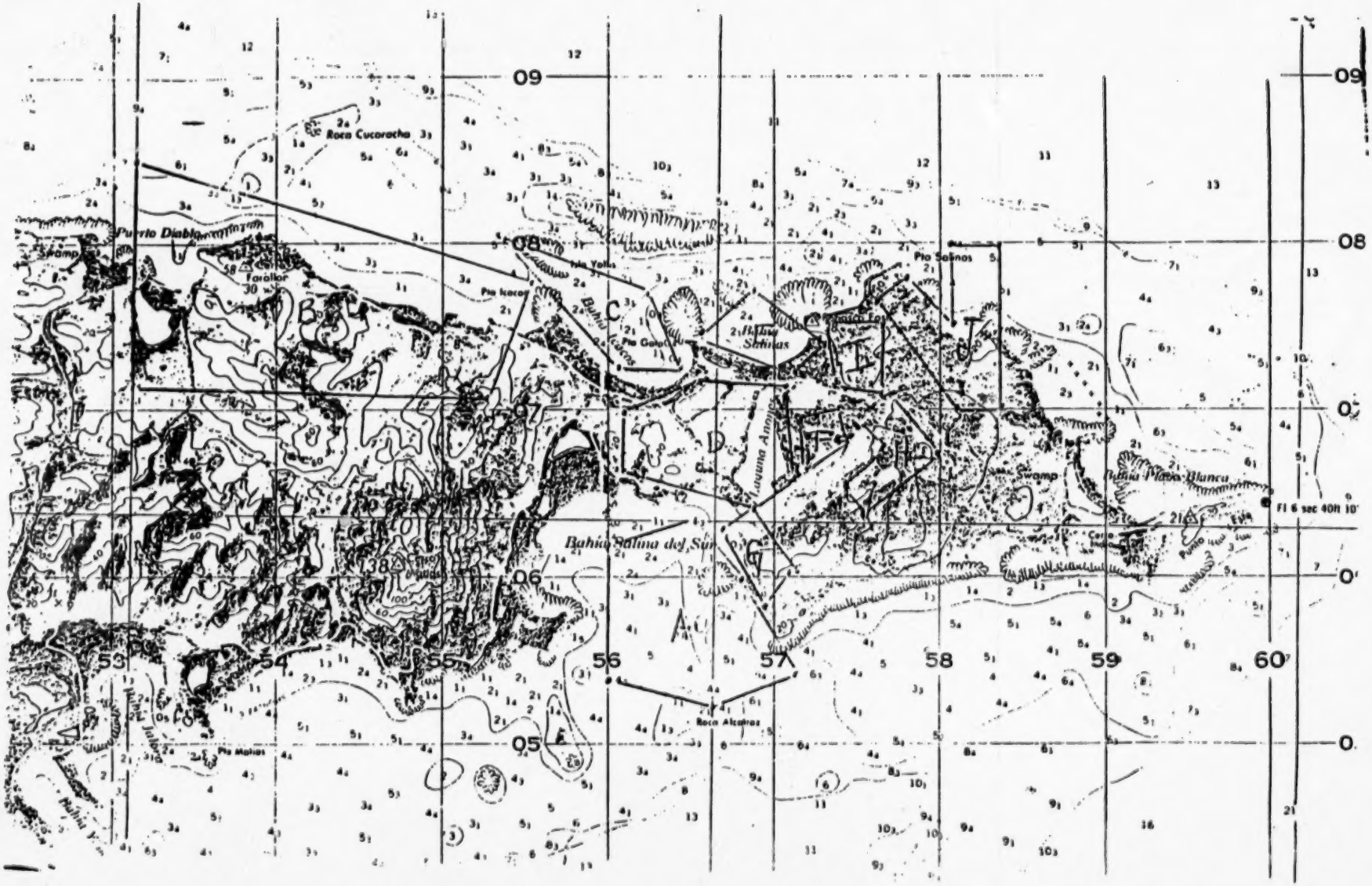
APPENDIX 2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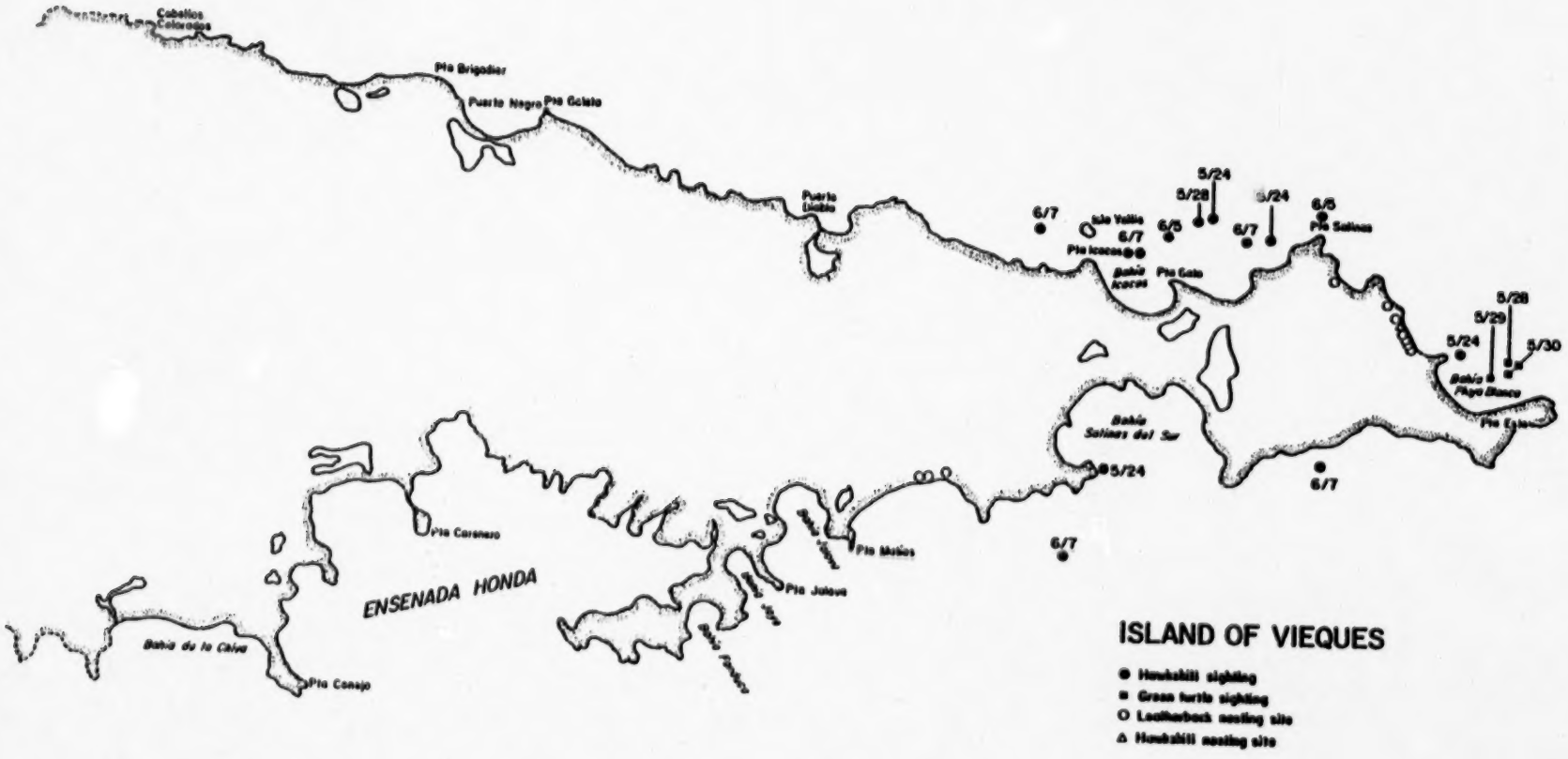
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Pta Este
Bahía Salinas del Sur
Pta Carenero
ENSENADA HONDA
Bahía de la Chiva
Pta Conejo
Pta Mulas
Pta Juluca
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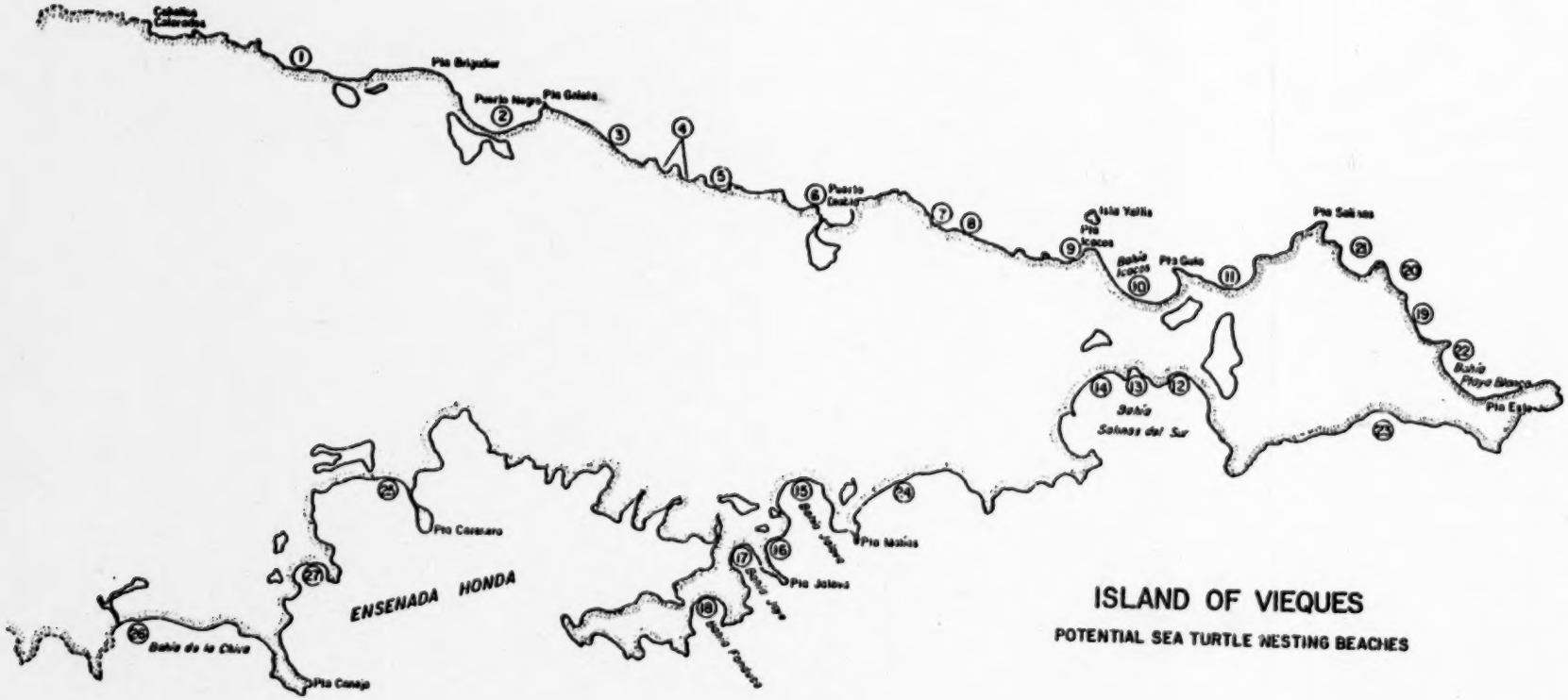
ISLAND OF VIEQUES
● Hawksbill sighting
■ Green turtle sighting
O Leatherback nesting site
△ Hawksbill nesting site



ISLAND OF VIEQUES

POTENTIAL SEA TURTLE NESTING BEACHES

EXCERPTS FROM PLAINTIFFS' POST-TRIAL BRIEF

* * * *

(8) In June 1974 the President ordered the Navy to terminate its weapons training on Culebra and ordered that a transfer of that activity to another site, if that site were in Puerto Rico, was contingent on its being acceptable to the Government of Puerto Rico. (CRB Exh. 116.)

The Navy's systematic, unilateral transfer of Culebra weapons training activity to Vieques from 1971 through 1975, thus violated the mandate of Congress, the Agreement between the Navy and the Government of Puerto Rico, and the orders of the Secretary of Defense and of the President.

C. *The Navy Transferred Culebra Training Activity To Vieques.*

In 1970 the air-to-ground and ship-to-shore Naval Gunfire Support ("NGFS") training conducted by the Navy in the Atlantic Fleet Weapons Range was almost entirely aimed at targets on Culebra. Vieques was principally used for artillery training and other maneuvers by the United States Marine Corps. In comparison to the levels of Navy training conducted on Culebra, Vieques was little used.[2]

This fact is supported by the 1970 testimony of the Secretary of the Navy before Congress that,

> "Ninety percent of all ship-to-shore gunfire support training for the entire Atlantic Fleet is done on the northwest peninsula of Culebra. Eighty percent of

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[2] The evidence does not substantiate any possible argument that Vieques in any prior year was utilized for military training nearly as intensively as it has been in the past few years since the transfer of Culebra training. (CRB Exhs. 123, 417; Answer to CRB Interrogatories No. 1 and 95.)

> the air-to-ground training at the Atlantic Fleet Weapons Range is done on the rocks and cays to the east and west of Culebra." (CRB Exh. 25, p. 3; CRB Exh. 26, pp. 300, 303-304; CRB Exh. 24, at unnumbered p. 7).

That Vieques was primarily a Marine training ground in 1970 is corroborated by the testimony before this Court of Dr. Harald Leuba, a former Defense Department systems analyst who directed a major study ("1971 Study") for the Secretary of Defense on Navy training operations in Culebra and Vieques.[3] Dr. Leuba testified that,

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[3] Dr. Leuba's testimony is also based on an extensive systems analysis of the Navy's *own* data on the levels of weapons training conducted by the Navy on Culebra and Vieques and on his own expert knowledge of those training operations. (Leuba, Tr. 65, 74, 78-79) The Navy produced voluminous data on the number of rounds fired, the number of ships operating, the number of aircraft sorties (missions) flown, and the number of hours of weapons training activity on Culebra and Vieques. (Leuba, Tr. 54-158; CRB Exh. 123) This data was produced by the Navy in response to plaintiffs' Motion for Leave to Take Depositions, filed on March 6, 1978. It shows that since 1971 Navy ship-to-shore and air-to-ground shelling and bombing on Vieques have dramatically increased. (CRB Exhs. 123, 417 [Answer to Interrogatories Nos. 1, 23, 25, 27, 85.]; CRB Exhs. 409, 410.)

Dr. Leuba's analysis of training levels in Culebra and Vieques was conducted to determine whether or not the Navy had transferred training from Culebra to Vieques. (Leuba, Tr. 53-55, 64.) Dr. Leuba, as an *added* precaution to assure accuracy in his analysis and conclusions, compared the Navy data on levels of training in Culebra and Vieques with the overall trends since 1970 in Navy manpower (CRB Exhs. 123, 65-66, 68.) Based on this analysis and on his own expert knowledge of the training conducted by the Navy's Atlantic Fleet, Dr. Leuba concluded that since 1971 the level of Navy ship-to-shore and air-to-ground activity on Vieques had increased due to the transfer of Culebra operations since that date. Dr. Leuba used Navy manpower levels as an indicator of the overall drop in Navy training while training in Vieques increased.

This makes his conclusion of a transfer from Culebra to Vieques a very cautious and reliable one because, as he testified, overall

"Q. Now, do I understand it from your testimony that each island was rather sort of an autonomous unit within that complex and each one had ascribed to that autonomous perimeter of land, a certain and determined type of naval exercise which was mutually excluded from the other?

A. That was very nearly exactly the case." (Leuba, Tr. 116.)

Dr. Leuba testified that the two ranges were not used interchangeably. He testified:

"[B]y and large there was a clear demarcation on the use of the two facilities. Culebra ship-to-shore and Vieques for the Marines." (Leuba, Tr. 117, 118, 124-126, 135, 157, 159-160.)

However, in each year from 1971 through 1975, the Navy methodically transferred Culebra air-to-ground and ship-to-shore NGFS training operations to Vieques, so that by the end of 1975 the Navy had transferred to Vieques all of the military training activity that it had been conducting on Culebra and which could be physically contained on Vieques. (Leuba, Tr. 56-57, 113, 127-28, 137.)

Dr. Leuba testified clearly and emphatically that military operations had been transferred from Culebra to Vieques *in each* of the years 1971, 1972, 1973, 1974 and 1975, and that by 1976 "there was nothing left on Culebra to transfer." (Leuba, Tr. 56-57, 83, 128.)

Navy training levels actually declined more sharply than manpower. (Leuba, Tr. 68-70.) Thus, while Navy overall manpower levels were declining and while Navy training requirements were declining even more rapidly than manpower levels, the level of ship-to-shore and air-to-ground training on Vieques was *increasing*. This, too, corroborates Dr. Leuba's conclusion that in each year, 1971 through 1975, the Navy transferred Culebra training to Vieques. Dr. Leuba's credentials as an expert on the subject of the Navy training conducted on Culebra and Vieques are extensive. (See Leuba, Tr. 49-53, 78, 139.)

Dr. Leuba stated:

"Q. Based on that analysis, do you have an opinion as to whether military operations have been transferred from Culebra to Vieques?

A. Yes, I do.

Q. What is that opinion?

A. I believe that activities have been transferred from Culebra to Vieques.

Q. In 1971 were training operations transferred from Culebra to Vieques?

A. Yes, they were.

Q. In 1972 were training operations transferred from Culebra to Vieques?

A. Yes.

Q. In 1973 were training operations transferred from Culebra to Vieques?

A. Yes.

Q. In 1974 were training operations transferred from Culebra to Vieques?

A. Yes.

Q. In 1975 were they transferred?

A. Yes, they were.

Q. In 1976 were training operations transferred from Culebra to Vieques?

A. No, they were not.

Q. Why?

A. *There was nothing left on Culebra to transfer.*" (Emphasis added.) (Leuba, Tr. 56-57.)

* * * *

"It doesn't matter how you measure, or what you use in base period. The conclusion is the same." (Leuba, Tr. 83.)

* * * *

> "[T]he conclusion is inescapable. It [Culebra training] was moved." (Leuba, Tr. 128.)

In its Answer to the Complaint, the Navy denied that it transferred Culebra training operations to Vieques. Paragraph 138 of the Complaint alleges:

> "Defendants have increased military operations on Vieques in whole or in part by transferring to Vieques directly or indirectly all or some of the military operations formerly conducted on Culebra."

Paragraph 142 of the Complaint alleges:

> "Defendants have neither requested nor obtained approval from the Commonwealth of Puerto Rico to move military operations from Culebra to Vieques."

The Navy's Answer admitted that the Navy had not obtained approval from the Government of Puerto Rico to move military training from Culebra to Vieques and denied that operations had been transferred. (Answer to CRB Complaint ¶¶ 138 and 142).

However, at the trial defendants offered no evidence on the transfer issue. Defendants did not contest Dr. Leuba's testimony that it had transferred Culebra training operations to Vieques. Defendants did not attempt to deny or rebut the overwhelming documentary evidence, grudgingly produced by the Navy itself, that a transfer to Vieques had transpired.[4] While the Navy

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[4] The Navy had listed as defense witnesses on the transfer issue Admiral John Jenkins and Ronald Kirkpatrick, a Navy statistician. (See Pretrial Order). Neither ultimately appeared as a witness. Mr. Kirkpatrick had prepared a report on behalf of the Navy on the hours of operation in Culebra and Vieques during the period 1970-1975, ostensibly intended to demonstrate that no transfer of operations occurred. (See Pretrial Order, list of defendants' exhibits). This report had been submitted to plaintiffs prior to trial as proposed defendants' Exhibit 28. Dr. Leuba analyzed this Navy report and was prepared to testify as to why it did not refute his conclusion that the Navy had transferred to Vieques. (Tr. 108.) Defendants' objected to Dr. Leuba's proposed testimony discredit-

failed to offer any direct evidence in its own defense on the issue of the unlawful transfer from Culebra to Vieques during the trial, it did provide additional, conclusive evidence in the form of direct admissions that the Navy had indeed transferred Culebra weapons training activity to Vieques.

Vice-Admiral George Kinnear, Commander of Naval Air Atlantic was called as an expert witness for the Navy on the question of the Navy's alleged need to train on Vieques. Admiral Kinnear offered no direct testimony on the levels of training in Culebra and Vieques in the Navy's defense on the transfer issue. However, during cross-examination Admiral Kinnear admitted that the Navy transferred Culebra activities to Vieques as a result of the termination of training on Culebra. The Admiral testified:

> "Q. Do you know where operations formerly being carried out in Culebra as specified in these statements are being performed at this moment?
>
> A. Throughout the training facilities in the Atlantic Fleet which there is no immediate replacement for the Naval gunfire *other than that on Vieques.*" (Emphasis added.) (Kinnear, Tr. 3308.)
>
> * * * *
>
> "A. And you want to know where the exercises that were taking place on Culebra at that time are taking place now?

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ing defendants' analysis on the question of transfer on the grounds that the testimony and report of Mr. Kirkpatrick had not yet been offered by the Navy. (Tr. 108-109.) After Dr. Leuba's extensive analysis demonstrating that the Navy had indeed transferred operations to Vieques, the Navy failed to offer this report or any other exhibit or testimony in its defense on the issue of transfer. Having evaluated this Navy report, however, Dr. Leuba testified that it corroborated his own conclusions that a transfer occurred. (Leuba, Tr. 158.) Thus, defendants appeared at trial ready to proceed with two witnesses on the transfer issue, only to fold after hearing plaintiffs' transfer case.

Q. Yes, sir.

A. A substantial number of those, I'm sure, are taking place in Vieques. . . ." (Kinnear, Tr. 3310).

Admiral Kinnear also testified,

"I'm willing to agree that much of what was being done on Culebra was probably then, regardless of how much it's been reduced in total quantity, now being done on Vieques. . . ." (Kinnear, Tr. 3326).

It was also revealed during the trial that Admiral Flanagan, while Commander of Roosevelt Roads Naval Station, had suggested that since the closing of Culebra, the Vieques range had become very crowded and that the training on Vieques had become difficult due to the crowding. This admission was made casually in a social setting in the presence of the United States representative to the Joint Commission on an Alternative to Culebra. It produced consternation in this official of the United States Government because of the *implication* that an increase had occurred on Vieques as a result of restriction on the use of Culebra. (Sanjuan, Tr. 40-41.)

In addition to expert evaluation of Navy operations data and the admission under cross-examination of the Navy's Admiral Kinnear, the Navy belatedly produced *on the last day of trial* additional conclusive proof that it transferred operations from Culebra to Vieques. On August 4, 1978, plaintiffs submitted interrogatories on the Navy together with a Supplemental Request For Production Of Documents. (See requests No. 5 through 58.) Four months and seven days later (after repeated protests by plaintiffs' counsel about defendants' delay) the Navy produced *on the last day of trial* certain classified documents in response to this request. (Tr. 6798-6799.)

These Navy documents are classified "Five Year Development Plans" for the U.S. Navy Atlantic Fleet Weapons Training Facility. *Portions* of these documents were declassified *after* the trial (of necessity due to the

Navy's untimely production) and received as CRB Exhs. No. 419-421. Each Navy document contains an explicit admission that Culebra training activity was transferred to Vieques.

The Navy Five Year Development Plan for fiscal years 1978-1982 was written on October 14, 1975. (CRB Exh. 419.) (See plaintiffs' Motion to Admit these documents, filed January 4, 1979). The Navy document states:

> "Although *targets have been installed at Vieques to replace the loss of Culebra targets*, training limitations are to be expected due to the requirement that scheduling of air-to-ground, close air support, and NGF exercises must be coordinated with the Marine Corps Command by integrating operations, scheduling and other controls." (Emphasis added.) (*Id.*, ¶ 5-3.2.)

The Navy makes the same admission in the Five Year Development Plan written on November 29, 1976 [5] and that written on November 11, 1977,[6] except that in the Five Year Development Plan of November 1977, shortly before this lawsuit was filed, the Navy *deleted* from the above quotation the phrase "to replace the loss of Culebra targets." [7]

In the previously classified portions of these documents, the Navy also admitted that the continuous development of Vieques was directed towards the "[a]bsorption of exercises formerly conducted on the Culebra Complex." [8]

The Navy's conclusive admissions that it transferred Culebra training to Vieques, coming to public light *only*

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[5] CRB Exh. 420, at ¶ 2-6.2 and ¶ 3-1.2.

[6] CRB Exh. 421, at ¶ 2-6.2 and ¶ 3-1.2.

[7] CRB Exh. 421, at ¶ 2-6.2 and ¶ 3-1.2.

[8] CRB Exh. 419, ¶ 2-6.4; CRB Exh. 420, ¶ 3-1.4; CRB Exh. 421, ¶ 3-1.4.

after this lawsuit was initiated, are even further corroborated by a plethora of uncontroverted Navy documents (publicly disclosed only after the lawsuit was initiated, in response to plaintiffs' Motion for Production of Documents filed on March 6, 1978), that reflect that the Navy was aware of official restraints against a transfer to Vieques and planned to carry out the transfer to Vieques gradually and without public visibility.

Considered together with the compelling, unrebutted evidence that a transfer did occur, these documents stand in direct conflict with the Navy's statements made prior to this trial to the Government of Puerto Rico and to this Court in its Answer to the Complaint, that a transfer did not occur.

The Navy acknowledged *internally* prior to the termination of its use of Culebra targets that a transfer to Vieques would probably be necessary. (CRB Exh. 16.) The Navy stated *internally* that a Presidential decision or Congressional action requiring a departure from Culebra would be cause to seriously consider unilateral action to relocate Culebra training activity either temporarily or permanently to Vieques. (CRB Exh. No. 11, p. 3.) The Navy speculated *internally* that a transfer of Culebra weapons training to Vieques could be accomplished with out an apparent increase in training activity on Vieques if guard boat patrols were used to prevent range-fouling by fishing vessels, and if "improvements" were made in range scheduling and in range instrumentation,—including installation of ships positioning radar—thereby increasing the "efficiency" with which the Vieques range could be used. (CRB Exhs. 16, 27, 75, 76, 77 and 89).

The Navy in fact made such changes in the use of the Vieques range. (CRB Exh. 417, Answer to CRB Interrogatories No. 50 and 147.)[9] The Navy civilian person-

[9] See also, CRB Exh. 74, an October 1974 internal Navy dispatch acknowledging that the range patrol function on Vieques was to attempt to accomplish Culebra operations on Vieques with reduced hours.

nel for the guard boat patrol and range command function on Vieques increased dramatically between 1974 and 1975. (CRB Exhibits. 78, 79, 92, 93, 102, 104, 417, Answers to CRB Interrogatories No. 66 and 133). After 1975, personnel and expenditures on Culebra dropped substantially. (CRB Exh. 417, Answer to CRB Interrogatory No. 67.) After 1975 the Navy in fact installed ships positioning radar and other target and range "improvements" on Vieques. (CRB Exh. 417, Answer No. 50 and 147.)

Yet the Navy concealed its shift of operations to Vieques and emphasized as early as December 1971 that it should be very careful *not to appear* to increase the tempo of training operations on Vieques. Thus, the Navy in a confidential document stated:

> "It would *seem advantageous* to spread out the usage [of Vieques] somewhat so as to give *more ships* a chance to fire without increasing the *apparent* weekly tempo." (Emphasis added.) (CRB Exh. 125, p. 4.)

The document also states:

> "With regard to Vieques, RADM Ward indicated that *we should be very careful not to appear to increase our tempo of operations above that of previous years. . . .*" (Emphasis added.) (*Id.*, at p.2.)

The Navy in an internal communication of April 1972 also stressed that because of the "extreme sensitivity" of any plan for relocating Culebra operations to Vieques, all Navy message traffic on the subject of transfer must be "flagged limited distribution special handling." (CRB Exh. 58.)

In late 1971 the Navy internally admitted that additional construction and training would occur on Vieques in order to accommodate a transfer of Culebra training. (CRB Exh. 57.) One internal Navy communication in January 1974 acknowledged that "practically all" military training activity in the Inner Range (Culebra

and Vieques) was being transferred to Vieques. (CRB Exh. 38, p. 2.) By 1975 the Navy admitted internally that the loss of Culebra and the Culebra Cays would cause a corresponding increase in operations on Vieques (CRB Exh. No. 55), and that the impact of the pending loss of Culebra would be that all NGFS would be conduced on Vieques. (CRB Exh. 98.) In October 1975 the Navy issued an internal directive that in light of the termination of training on Culebra existing levels of training in the Atlantic Fleet Weapons Range were to be continued by more efficiently utilizing the Vieques range. (CRB Exh. 100, enclosure 1.)

While responding to restrictions on the use of Culebra by quietly transferring weapons training activities to Vieques, the Navy was publicly proclaiming that it could not do so and had not done so.

Thus, in testimony before the Senate, in late 1970 the Navy stated that it had no alternative to Culebra:

> [Senator Jackson:] "In other words, supposing they approve elimination of Culebra as a testing area, which could happen on the Floor of the Senate. Then what would you do?"
>
> [Mr. Sanders, Assistant Secretary of the Navy:] "We would simply do without." (CRB Exh. 24, at unnumbered p. 54).

In Congressional hearings in 1975 on P.L. 94-107, the Navy testified that since 1971 it had studied and rejected over thirty alternatives to Culebra, *including Vieques.* The Navy testified that *it had rejected Vieques* as an alternative to Culebra training in part because the Commonwealth of Puerto Rico opposed the transfer of operations formerly conducted on Culebra. In the 1975 Congressional hearings the Navy testified as follows:

> [Representative Talcott:] "If we accept the fact that there are overriding reasons for this Nation to give up Culebra, what alternative sites are under consideration and what will the cost be in relocating the Culebra facility?"

[Mr. Bowers, (Navy witness):] "Since 1971, the Navy has explored well over 30 sites in the Atlantic and Caribbean areas. We have also considered the feasibility of constructing an artificial island as a target facility. The vast majority of the sites were eliminated from consideration because they were beyond the practical range in which logistic support could be provided from Naval Station Roosevelt Roads. As you know, Naval Station Roosevelt Roads is the support base for the Atlantic Fleet Weapons Training Facility. In addition, almost all of the sites which are beyond a practical logistics support range were found to be unsuitable for other reasons as well. There has been previously noted in testimony that Desecheo and Monito were at one point under consideration but were rejected because of the Law of the Sea considerations as a result of a decision made by the President. The island of Monito and a portion of the island of Mona—both islands are Commonwealth of Puerto Rico lands—were offered by the Puerto Rican Government to the Navy as a replacement site for Culebra. The decision not to use them was made because of the potential adverse effect their use might have on the U.S. Government's position in Law of the Sea matters. After the Desecheo-Monito-Mona relocation site was rejected, a Commission was appointed with representatives from the Department of Defense and Navy, and the Commonwealth of Puerto Rico, and that Commission has, over the past year, been diligently attempting to find an alternative relocation site. In these negotiations conducted by the Commission, there was undertaken an examination of several sites within the jurisdiction of the Commonwealth of Puerto Rico. The only viable site identified from the Navy's point of view was the island of Vieques. Although there were some discussions on means of utilizing Vieques efficiently so as not to measureably impact the community, the

Commonwealth representatives felt that any apparent intensification of activity on Vieques was not desirable and, accordingly, the Commission began to look for alternative sites beyond the jurisdiction of the Commonwealth of Puerto Rico." (Hearings Before the House of Representatives Subcommittee on Military Construction Appropriations, 94th Cong., 1st Sess.; Military Construction Appropriations for 1976; Part I at p. 146.)

* * * *

[Mr. Talcott:] "What is the position of the Puerto Rican Government on shifting training activities from Culebra to Vieques?"

[Mr. Bowers:] "As I indicated earlier, the Puerto Rican Government has indicated its objection to an intensification of activity on Vieques as a result of the termination of activity on Culebra." (*Id.* at 147.)

In January 1975 at a meeting of the United States/Commonwealth of Puerto Rico Joint Commission on an Alternative to Culebra, counsel for the Government of Puerto Rico stated that it had been recently suggested by a Department of Defense official that the decrease in military operations on Culebra had been achieved by increasing training activity on Vieques. The Navy representative at this official meeting denied the accusation.[10] (CRB Exh. 240, p. 2.)

Thus, while Vieques was a potential alternative for consideration by both parties in case of a negotiated transfer, its clandestine use as a transfer site for Culebra training activity was neither approved by the Government of Puerto Rico (see Answer to the Com-

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[10] The obvious question must be posed. If the Navy considered the movement of Culebra training to Vieques as lawful, why did it deny and seek to conceal the transfer?

plaint, paras. 138 and 142) nor submitted to Congress for its review and approval. This course of conduct by the Navy violated the law, in that specific requirements laid down by Congress were not met.

D. *The Navy's Transfer of Culebra Weapons Training Activity to Vieques Flouted Legal Authority.*

Introduction.

While the Navy was transferring Culebra operations to Vieques and publicly denying that it had done so, the Navy by so transferring was violating Acts of Congress, and the Orders of the Secretary of Defense and the President. The Congress constructed a system for the resolution of the dispute over Culebra training. Any transfer decision was to be preceded by the consent of the Government of Puerto Rico.

PLAINTIFFS' EXHIBITS

[SEAL]

THE GOVERNOR OF THE
COMMONWEALTH OF PUERTO RICO

March 7, 1974

The Honorable John W. Warner
Secretary of the Navy
The Pentagon
Washington, D.C.

Dear Mr. Secretary:

As I personally committed myself to Secretary of Defense, Elliot Richardson, as I testified in the special hearing of the House Armed Services Committee Conferees on November 8, 1973, and as I reiterated to you in my letter dated November 26, 1973:

> "My Government is committed, without qualification, to support the transfer of Navy operations from Culebra to the uninhabited islands of Desecheo and Monito."

Nonetheless, because I deem it in the best interest of all parties concerned, I have kept an open mind in considering three alternative plans you kindly submitted to me on behalf of the Navy.

I have diligently and exhaustively studied these alternatives and have met with the Mayor and other representatives of Culebra, directly and independently surveyed opinion there and in Vieques, and sought out technical advice from representatives of Culebra, knowledgeable representatives of the United States Navy and from many other sources as well.

It has always been my view that no alternative involving the transfer of any operations from the Culebra complex to Vieques or the continuation of naval train-

ing at the keys adjacent to Culebra would be acceptable unless fully supported by the residents of Culebra and Vieques. Without this prerequisite any such alternative would not be a permanent solution to the Culebra problem and, in my judgment, would only breed instability.

Through my careful and exhaustive examination of this alternative, I have determined that there is a substantial body of opinion in Culebra and Vieques, based on genuine concern, that is adamantly opposed to any alternative involving the transfer of any part of the training now taking place at Culebra to Vieques and to the continuation of naval training at the keys adjacent to Culebra. In the final analysis, I have concluded that it is these people who live under the circumstances of naval training who must determine their own future.

It is my firm decision, therefore, that the best alternative is that all naval gunfire support training and air-to-ground weapons training be transferred from the northwest peninsula of Culebra and from the Culebra off-shore cays to the uninhabited islands of Desecheo and Monito off the west coast of Puerto Rico.

Accordingly, and in conformity with last year's federal Culebra legislation, the Commonwealth of Puerto Rico hereby agrees to make available to the United States Navy for the long-term continued use of the Atlantic Fleet Weapons Range and Fleet Marine Force Training Area by the Navy: (1) the island of Monito and portions of the island of Mona reasonably required to facilitate weapons training at the island of Monito relocated from the Culebra complex, and (2) present areas and facilities on the island of Vieques for continuation of training now conducted there. I understand that Desecheo now is in federal ownership and available from the property inventory of General Services Administration for selection by the United States Navy.

The Commonwealth Government hereby agrees further that it will not undertake any proposed facility or ac-

tivity which would interfere with the Navy training mission, specifically including construction of the proposed deep water superport on the island of Mona if this project would interfere with the Navy training mission at Desecheo and Monito.

It is my hope and intention that my letter signed today, together with whatever transmittal letter you wish to send, will constitute the "satisfactory agreement" between the Navy and the Commonwealth of Puerto Rico required to be reported to the Committees on Armed Services of the Senate and the House of Representatives and to be reported by the Secretary of Defense to the Committees on Appropriations of the Senate and the House of Representatives. If, however, you require any additional action on my part to effect the relocation of the Culebra weapons training complex, I am at your disposal and hope we can expedite this transfer in every way possible.

I want you to know how much I appreciate your efforts which have made possible this permanent and satisfactory resolution of the Culebra dispute.

Sincerely yours,

/s/ Rafael Hernandez Colon
RAFAEL HERNANDEZ COLON

[SEAL]

DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
Washington, D.C. 20350

IN REPLY REFER TO
Ser 40B/2981
12 June 1974

MEMORANDUM FOR THE VICE CHIEF OF NAVAL OPERATIONS

Subj: Culebra/Vieques

Ref: (a) TELECON OP-09A and OP-04A of 11 June 1974

1. This memorandum responds to the two questions posed during reference (a).

a. *"What can we do at Culebra that we can't do at Vieques?"*

(1) Naval Gunfire Support (NGFS) training can be conducted at both sites, but live ordnance may be used at Vieques whereas only inert "PUFF" projectiles are authorized at Culebra.

(2) A comparison of air-to-ground (A/G) training capabilities is as follows:

Culebra Complex	Vieques
Loft, over-the-shoulder, dive and radar bombing. (One of three targets is instrumented)	Strafing
	Close air support exercises
Rocket firing	Walleye missile
Profile tracking radar	

(3) Summary—While the NGFS and certain of the A/G exercises can be conducted at both locations, it is best to say that current facilities in the Culebra complex

and on Vieques complement one another, a flexibility that reduces scheduling problems during busy training periods, e.g., SPRINGBOARD.

b. *"Why not move to Vieques?"*

(1) The relocation of training from the Culebra complex to Vieques has the following advantages:

(a) Should satisfy Congress.

(b) Eliminates all weapons training on Culebra and its off-shore cays.

(c) Retains geographically and operationally intact the Inner Range Complex of the Atlantic Fleet Weapons Range.

(d) Meets the requirements of enacted legislation.

(e) Avoids Law of the Sea issue.

(f) Poses no danger to residents on Vieques.

(g) Of all alternatives it can be accomplished with less funding and in shorter time.

(2) Disadvantages:

(a) Increases the current level of training on Vieques contrary to the expressed wish of the Governor of Puerto Rico during recent agreement negotiations.

(b) Causes increased, but not insurmountable, scheduling problems.

(c) May complicate the achievement of the SECDEF objective of ensuring, through the agreement with the Commonwealth, the long term continuation of the Navy and Marine Corps weapon ranges on Vieques.

(3) The Navy is committed to a relocation of weapons training from Culebra, the NGFS training as a minimum. We prefer that Vieques be the relocation site, the recommended first choice of the 1972 Culebra Study. This would entail construction of & rearrangement of existing targets and installation of additional command and control equipment.

2. It would not be advisable to unilaterally commence relocation initiatives now because:

An agreement with the Commonwealth has not been reached (SECDEF recently suspended negotiations); a NSC Under Secretaries Committee memorandum addressing the Law of the Sea problem and relocation options is awaiting a Presidential decision; and appropriated funds will not be obligated until Congress approves an agreement.

3. A near future decision and/or Congressional action could necessitate a partial or total Navy departure from Culebra in 1975 with a relocation site not clearly defined or, if defined, one that could not be ready for use in 1975. These factors, coupled with potential future negotiation problems with the Commonwealth would be cause for us to seriously consider unilateral action to relocate either temporarily or permanently to Vieques. It is presently too soon to sort out all factors surrounding such a judgment.

Very respectfully,

/s/ W. D. Gaddis
W. D. GADDIS
Deputy Chief of Naval Operations
(Logistics)

[EMBLEM]

COMMANDER CARIBBEAN SEA FRONTIER
COMMANDANT TENTH NAVAL DISTRICT

11 January 1974

RADM William F. Clifford, Jr., USN
Director, Logistic Plans Division
OPNAV
Navy Department
Washington, D.C. 20350

Dear Bill,

As I told you in our recent telephone conversation, I think that your three plans represent very sound staff work. I have had them reviewed both here and at AFWR, and the results are contained in the comments appended as an enclosure to this letter.

Plan Number Two is, of course, the one we would like to see implemented, and if in the course of negotiations it appears that we are forced to modify it by retaining only Cross Cay, this could be accommodated, although it would certainly limit our flexibility. As you know, this solution has the advantages of substantially reducing the airspace warning, danger, and restricted areas, while eliminating the cost of relocating the Cross Cay scoring system and easing the pressure on Vieques. Since the retention of Cross Cay only is essentially a modification of Plan Two, I agree with your decision not to develop it into a separate plan, but look to it as a possible fallback position during discussions with the Commonwealth.

Enclosed is a copy of a very inflammatory article in the San Juan Star and its rebuttal the following day by the FAA Area Manager. In the meantime Mr. Fenn caused the enclosed memo to be issued which clarifies former wording which I feel was unclear and added to

the situation which was under discussion during your visit. Also please note a translation of an El Mundo article which I believe describes the Copaken situation correctly.

In answer to your two questions:

a. I feel that we could cease operations on the NW Peninsula by 1 July 1974. There should not be any serious difficulties in accommodating construction activity on Vieques concurrently with an increase in range activity. This answer is predicated on the utilization of MCB assets which operate with fewer constraints than do civilian equivalents. Even with this approach, there could be stand-down periods—primarily due to Marine Corps activity. It would be desirable to negotiate and coordinate this aspect with CMC. In any event, if we are able to secure a Plan Two solution, we will have to live with whatever temporary constraints on scheduling it occasions.

b. Yes, it will be necessary to re-negotiate the Navy/CMC Vieques agreement. The language of the current agreement gives the Marine Corps preemptive scheduling authority on Eastern Vieques. With practically all inner range activity shifting to Vieques, the manner of scheduling is going to have to be modified. Other items which will also need addressing include the No-Free Zone and Safety Zone around the Cerro Matias OP, and small arms activity in Area 7A.

Sincerely,

/s/ James D. Ramage
JAMES D. RAMAGE

CONFIDENTIAL

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CULEBRA STUDY (C)
A. CINCLANTFLT 282013Z MAR 72
1. IN VIEW OF EXTREME SENSITIVITY LOCALLY OF ANY PLAN OR STUDY FOR RELOCATION OF CULEBRA TARGETS TO VIEQUES, IT IS HIGHLY RECOMMENDED THAT ALL MESSAGE TRAFFIC CONCERNING THIS SUBJ BE FLAGGED LIMITED DISTRIBUTION SPECIAL HANDLING.
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CONFIDENTIAL

THE SECRETARY OF DEFENSE
Washington, D.C. 20301

1 APR 1971

MEMORANDUM FOR SECRETARY OF THE NAVY

SUBJECT: Culebra

As you know, I have reviewed the study of Culebra which Congress directed me to undertake and I have sent my recommendations to them. (A copy of the study and my transmittal letter to Congress are enclosed).

Generally speaking, I think we have worked out an equitable arrangement. Its success however rests on our ability to reestablish an adequate rapport with the people of Culebra, Vieques and Puerto Rico.

My letter to Congress, as well as the last section of the Culebra study itself, includes a number of recommendations which I suggest you consider very carefully. For your convenience, and to expand on some of the details and concepts, I have collected these recommendations as an attachment to this memorandum. When you implement these recommendations you should pay more attention to their spirit than to their letter. It is my intention to avoid, as much as possible, a repetition of the difficulties we had with respect to Culebra; to that end the purpose of these recommendations is considerably more important than their content. None of this is to deny the importance of their content. We are surely committed to do those things we have publicly promised to do. But it is important to do those things in a way and with a spirit which will achieve the desired result.

I have continuing confidence in the integrity and dedication of the personnel of the United States Navy and fully trust that our relations with Puerto Rico in particular and the civilian community in general will

reflect the esteem and honor in which Navy personnel are held.

/s/ Melvin Laird
MELVIN LAIRD

Enclosures (3)

CRB 67

DECLASSIFIED—1971—NE

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RECOMMENDATIONS FROM CULEBRA STUDY

1. End all explosive bombardment of the Northwest Peninsula of Culebra by January 1, 1972. (This will require the prompt development and production of rounds for Naval Gunfire Support training operations which emit a safe puff of smoke or otherwise simulate an explosion without the attendant hazards of explosives.) If the rounds are not available by January 1, 1972 you will have to use BL&P and spotting rounds.
2. Open all of the Flamenco Beach for public use at all times except during ship firing.
3. Construct a road to Brava Beach and a bath house there so the Culebrans will have unrestricted access to a bathing beach at all times.
4. Stop removal of sand from all beaches under Navy control and take whatever legal steps are necessary to halt unauthorized exploitation of ecological resources of Culebra which are under Navy stewardship. (This will require controls on cattle and goat grazing and legal action—through the Commonwealth—against squatters.)
5. Begin the process of instrumenting the Northwest Peninsula impact area. (Even if the ship to shore gunfire range is relocated to Vieques—which should also be instrumented—the Culebra range should be instrumented in the meantime.)
6. Continue actions to fulfill commitments made in the agreement of January 11, 1971, undertaken in response to paragraph (c) of Section 611 of Public Law 91-544.

7. Maintain unrestricted sea and air corridors between Culebra and St. Thomas, Vieques and mainland Puerto Rico.

8. Station a full time Spanish-speaking U.S. Naval or Marine officer in Dewey and another in Isabel Segunda, Vieques responsible for Range Safety. This officer should:

   a. have an office in the immediate area of the inhabitants of the island

   b. have the authority to stop operations for any necessary reason and

   c. have the communications facilities required so that he is accessible to the civilian population and in contact with the appropriate command and control centers for all range activities.

9. Hire (subject to the Mayor's right of approval) a Puerto Rican (Culebran or ex-Culebran if possible) civilian (GS 10-13 level) to live on Culebra and another (Viequan or ex-Viequan) for Vieques as resident commissioner for community relations. Each should:

   a. form and participate in a citizen's commission to act as a liaison group between the Navy and the islanders.

   b. have the authority to "halt" anything for 4 to 8 hours (while he gets higher level decision).

   c. process small claims and

   d. undertake such other actions as may be appropriate to improve the community relations aspects of Navy and Marine presence on Culebra and Vieques in particular and Puerto Rico in general.

10. Put AFWR and all ranges (Navy and Marine; surface, air, submarine, RD&T) under a Washington

Hq. (e.g., ASN(I&L) who would perhaps delegate supervision and management to the DCNO for Operations and Readiness).

11. Pursue the program recently begun by ASD(I&L) to determine ways of helping the economy of Vieques with Defense procurement or Defense employment.

12. Expand that program to consider Culebra, including civilianization of Navy observer jobs on Culebra.

13. Do not send Marine personnel who operate Camp Garcia to Vieques for temporary duty assignments which limit their stay to just under six months. (Either rotate camp management personnel with the forces being trained, or assign them there on a permanent basis. Civilianization of camp management functions should be considered.)

14. Establish a new Naval Gunfire Support safety rule: If a civilian population resides in the half circle defined by ± 90° from bearing of gun and range of ammunition being used, use BL&P or other non-exposive rounds only.

15. Establish the rule for Naval Gunfire Support training, that violation of any range safety rule (at any time, including the preview cruise) disqualifies the whole exercise. The offending vessel must pull off the range for 24 hours or suffer some other appropriate consequence. (The civilian in 9 above) can enforce this rule if necessary.

16. Do not add duds to any now sanitized range areas. (Specifically * * *

17. Once instrumented scoring data is available, studies should be undertaken to measure the effectiveness of Naval Gunfire and assess its value vis-a-vis alternative systems.

18. Begin immediately to study the relationship between future training requirements (1985 and beyond) and the expected ability/suitability of range areas.

19. In general, range activities should not be expanded where such expansion requires disturbing ecological resources (reefs, bird colonies, forests, etc.), unless such action is approved or acquiesced in by responsible authorities.

20. In order to improve the overall quality of Naval Gunfire Support readiness, consider permitting Naval Gunfire Support qualification at instrumented target sites only.

21. Begin those land surveys, training maneuver analyses, and engineering studies required to permit the option of deciding in late 1972 to move the training targets on Culebra to Vieques by June 1975.

22. Establish a full time environmental specialist position at Roosevelt Roads to inventory resources requiring special protection, develop a conservation plan, and recommendations for avoiding or reducing environmental damages and to perform liaison duties with Federal and Commonwealth environmental or conservation agencies.

CONFIDENTIAL

LCDR D. L. McCORVEY
OP-405G1, X55065
21 May 1974

CULEBRA

ISSUE

Congress introduces mandatory requirements for Navy to move out of Culebra.

EFFECT OF THE AMENDMENT

Enactment of this amendment or bill would conflict with the provisions of PL-93-166 section 204 to establish an agreement between Navy and the Commonwealth of Puerto Rico which would assure long term continuity of the Atlantic Fleet Weapons Range and specifically the Navy and Marine Weapons Training areas on Vieques Island.

Enactment of the amendment might eliminate the incentive for the Commonwealth to reach agreement with the Navy. It could further encourage the Commonwealth to oppose weapons training on Vieques.

Without a prior agreement with the Commonwealth providing lands for construction of a replacement training site, current naval gunfire and air to ground training *would have to be immediately transferred to existing facilities on Vieques.*

Relocation of all training to Vieques would:

1. increase weapons training activities at Vieques not desired by the Commonwealth
2. require the construction of additional targets on Vieques

The Commonwealth could claim that Navy had subverted the intent of PL-93-166 section 204 to resolve the issue of selecting a relocation site by negotiation. (See discussion of TAB A)

Without the provision of funds for replacement training facilities on Vieques and the achievement of agreement with the Commonwealth of Puerto Rico that ensure the long term continuation of the Atlantic Fleet Weapons Range, a move from the Culebra Complex could result in the degradation of naval gunfire and air weapons delivery proficiency in the Atlantic Fleet and ultimately in Commonwealth moves to decrease Vieques training.

DEFENSE POSITION

Oppose any immediate mandatory relocation from Culebra unless Congress is prepared to protect Defense (Navy) interests on Vieques and make funds available through PL-93-166 to provide facilities on Vieques to permit execution of the amendment. We would prefer to continue under the direction of PL-93-166 Section 204.

Oppose Congressional selection of any alternative site that has not been carefully reviewed with the Department of Defense.

DISCUSSION

Any amendment must be clear as to whether the Northwest peninsula of the main island of Culebra or the main island plus the off shore cays now used by Navy are the subject of the amendment.

If only the Northwest peninsula is specified the Navy would have no serious objection as the naval gunfire training now conducted there would be moved to existing naval gunfire ranges on Vieques. This would require significant changes in fleet scheduling and exercise policies, but could be done. This was

proposed to the Commonwealth of Puerto Rico as one solution to avoid a conflict between the USG law of the sea position at the forthcoming International Law of the Sea conference and the planned use of the Mona Passage for a weapons training relocation site. The Commonwealth rejected the proposal stating that this increase in activity on Vieques would be contrary to the best interest of residents of Vieques. The Navy position is that with improvement of the existing facilities and range instrumentation that there would be no additional danger or disturbance to the residents of Vieques. In view of the Navy's presentation and the Commonwealth's rejection of this proposal, an amendment for removal of naval gunfire training could be perceived by the Commonwealth as an attempt by Navy to use Congress to achieve what has been unattainable to date by direct negotiations. Such an event would no doubt harden the Commonwealth's position, further decreasing the possibility of reaching the agreement required by the Congress to protect the Vieques training areas.

If the amendment also includes the air-to-ground training on the Culebra cays (i.e. all active weapons training in Culebra Complex) Navy would again have to shift training to Vieques. This would create significant scheduling problem increase training activity at Vieques and require construction of additional targets on Vieques to absorb the additional training. It would further give voice to Commonwealth claims that Navy had subverted the intent of the currently enacted legislation, PL-93-166, section 204. Again if Congress is prepared to protect Navy interests on Vieques, accept the political affront to the Governor of Puerto Rico, and provide sufficient funds to execute the amendment, Navy could not object on terms of readiness and training since Vieques was the preferred relocation site proposed in the 1972 Culebra study.

CULEBRA AGREEMENT NEGOTIATIONS

Chronology

Date	*Event*
2 November 1973	First Negotiating Session-Secretary Bowers VADM Gaddis exchange preliminary view with Commonwealth representatives, Representative Benitez-Culebra is fundamental issue, both seek mutually acceptable solution, agree to confidentiality, use of Culebra off shore targets and Law of the Sea issue raised.
8 November 1973	Testimony by Navy and Commonwealth before the House Armed Services Committee. Copaken representing Mayor of Culebra and Governor, Law of the Sea issue raise. Testimony by John Moore. Secretary Warner met with Governor Hernandez-Colon on two occasions pressing for solution which would avoid LOS issue.
26 November 1973	Governor Hernandez-Colon sent letter to Secretary Warner offering to consider other sites and requested a concrete plan related to the use of the Culebra Keys and Vieques.
6 December 1973	Representative Benitez sent letter to Secretary Bowers requesting submission of three plans, (i.e. I.—Desecheo/Monito; II.—Vieques/Culebra Keys and III.—Desecheo/Culebra Keys).
20 December 1973	Secretary Warner discusses the three requested plans with Representative Benitez.

3 January 1974

Mr. Copaken requests in the name of the Governor a copy of the three plans for review and consideration by the Governor. Advised that plans would be furnished if Governor so requested.

8 January 1974

Governor Hernandez-Colon designates Representative Benitez as Commonwealth representative with respect to these particular aspects of the Culebra matter. Also requests copies of the three plans.

9 January 1974

Secretary Warner sends letter to Governor Hernandez-Colon forwarding the three plans and offered to meet personally with Governor to receive his evaluation of the three plans.

14 February 1974

Governor Hernandez-Colon meets with Secretary Warner and discusses impact of Vieques/Culebra Keys plan on Culebrans.

15 February 1974

Secretary Bowers sends letter to Governor Hernandez-Colon providing additional detail on impact of the Vieques/Culebra Keys plan on fishing around Culebra and transportation to the island.

7 March 1974

Governor Hernandez-Colon sends letter to Secretary Warner rejecting the Vieques/Culebra Keys plan and advocated the Desecheo/Monito plan as a basis for agreement. Also states no increase in use of Vieques could be accepted by Commonwealth.

15 March 1974

Secretary Warner sends letter to Governor Hernandez-Colon calling for additional consultation and re-

quests designation of the Commonwealth representative.

19 March 1974

Governor Hernandez-Colon Telegram to Secretary Warner designates Mr. Copaken Commonwealth attorney to prepare a draft (agreement) with Secretary Bowers.

25 March 1974

Meeting with Mr. Copaken—Asks for demonstrable act by Navy on 1 July 1975—Suggests LOS issue can be applied to Virgin passage/Culebra reports environmental resistance to placing people on Mona—Navy will provide a proposal in two weeks.

9 April 1974

Secretary Bowers sends letter to Governor Hernandez-Colon offering two Mona Passage plans (i.e. on updated Desecheo/Monito Plan and a Mona/Monito plan) indicating the Mona/Monito plan would be superior. Copy of letter delivered to Copaken at negotiating session same day. Copaken raises issue of environment of Mona and questions unsuitability of Desecheo.

12 April 1974

Negotiating session—Repeat of environmental objections and suitability of Desecheo.

17 April 1974

Governor Hernandez-Colon refers Secretary Bowers to Mr. Copaken for the Commonwealth response to his 9 April letter. Governor does not take written position.

18 April 1974

Telephone call from Mr. Copaken to Capt. Jenkins stating Governor Hernandez-Colon rejects Mona option.

CINCLANTFLTNOTE 5400
3 APR 1975

NAVY-MARINE CORPS JOINT USAGE PROCEDURES FOR VIEQUES

1. *General.* With the loss of the Culebra Target Complex, and prior to construction of replacement facilities, the impact area on eastern Vieques must be used for naval gunfire support and air-to-ground operations as well as for Marine artillery firing operations. Target realignment within the designated impact area will provide for the most efficient use of the area available. Maximum cooperation and coordination are required to ensure that all Navy and Marine training requirements are met. (The map reference for the subject area is Defense Hydrographic Center Combat chart, Isle De Vieques Part 25C01, 2d Ed of 6 May 1974).

2. *Eastern Vieques Training Areas* (See Tab A)

a. *Ground Maneuver Area.* That portion of the eastern Vieques operating area west of the 528 grid line. Training evolutions within this area will be as directed by the Commanding Officer, Camp Garcia.

b. *Artillery Impact Area.* Unless specific allocations are made in the CINCLANTFLT Quarterly Employment Schedule, this area (between the 528 and 559 grid lines) will normally be available for use of Marine artillery. A no-fire zone is established to protect the Cerro Matlas Observation Post. There will be no firing within 1000 meters of that position (see Tab A).

c. *Naval Gunfire/Air Impact Area.* Designated Naval Gunfire Targets, Close Air Support Training Targets, i.e., airfield, SAM mockups, tanks, etc., are located in the area between the 559 and 590 grid lines. Unless specific allocations are made in the CINCLANTFLT Quarterly Employment Schedule, the naval gunfire/air impact area will normally be used for air-to-ground and

naval gunfire support training. When Marine artillery requirements include the air impact area, any conflicts will be resolved by COMNAVFORCARIB using AFWTF as scheduling agent.

d. *Eastern No-Fire Zone.* Land area east of the 590 grid. No ordnance will be expended within this area to avoid damage to the Ponta Este Light.

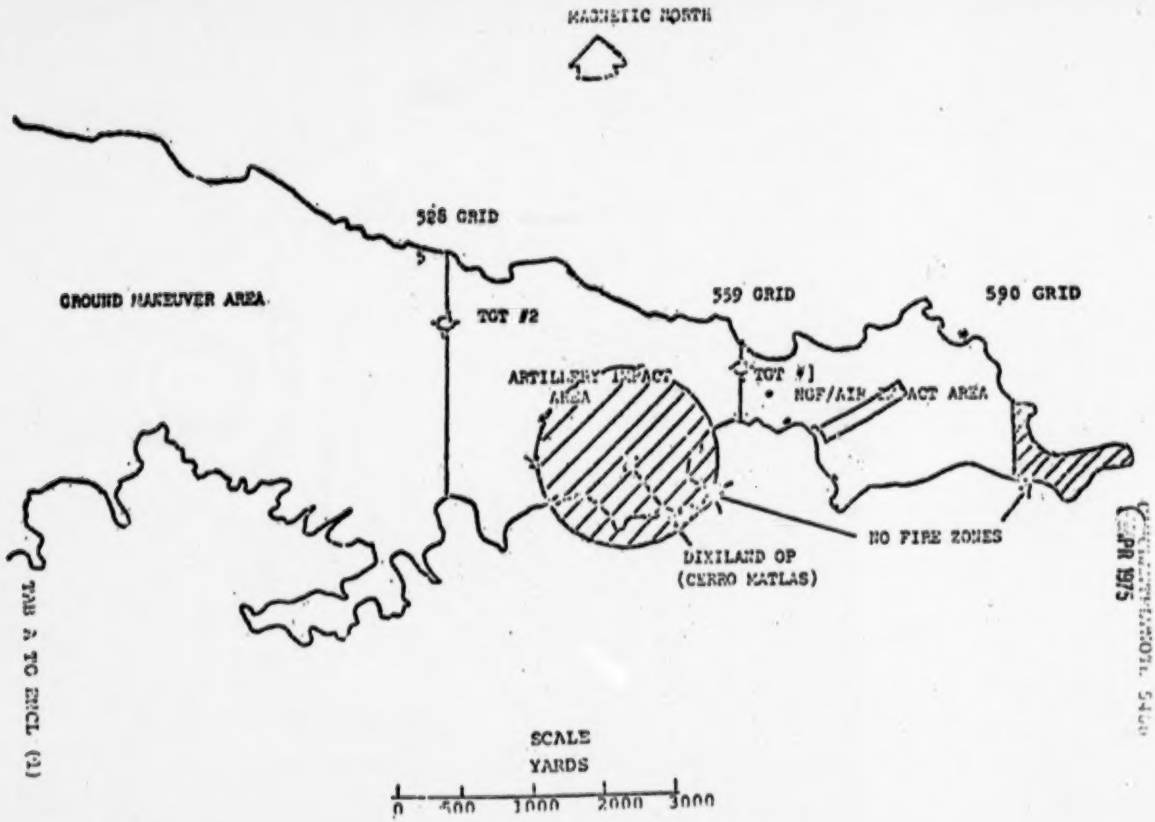
3. *Scheduling*

a. Marine and Navy training requirements for the eastern Vieques training area will be presented at the CINCLANTFLT Quarterly Scheduling Conference. Subsequent additions/changes will be coordinated between the Commanding Officers of the Atlantic Fleet Weapons Range and Camp Garcia.

b. With respect to the Ground Maneuver Area, Marine requirements have priority and will be as scheduled by the Commanding Officer, Camp Garcia.

c. COMNAVFORCARIB is assigned overall responsibility for the coordination of AFWTF training facilities. In the eastern Vieques training area this authority includes the artillery impact area, naval gunfire/air impact area, the targets therein and air-to-ground targets #1 and #2 located on the 559 and 528 grid lines.

4. *Target/Range Maintenance.* The Commanding Officer, Atlantic Fleet Weapons Training Facility will be responsible for range maintenance and target sanitation in those areas used in support of Atlantic Fleet Weapons Training Facility operations.



TAB A TO ENCL (1)

APR 1975

EXH. AT14

THE SECRETARY OF DEFENSE
Washington, D.C. 20301

MAY 24 1973

MEMORANDUM FOR THE SECRETARY
OF THE NAVY

SUBJECT: Culebra

As you know, during my confirmation hearings before the Senate Armed Services Committee in January, I indicated that I would look into the Culebra situation. In keeping this pledge, I have reviewed the lengthy history of this problem and, in particular, the views of the Department of the Navy.

In my judgment, it would be in the long-range interest of the Department of Defense to move the current Navy training activities by July 1, 1975, from the Culebra complex to the islands of Desecheo and Monito, provided:

1. That the Congress authorizes and appropriates the funds required; and

2. That a satisfactory overall arrangement can be worked out with the Government of Puerto Rico for carrying out the proposed move and for insuring the long-term continuation of the Atlantic Fleet Weapons Range and the Fleet Marine Force training area.

Until these provisions are met, and the requirements of Section 1022 c of the National Environmental Policy Act of 1969 are satisfied, current Navy activities in the Culebra complex must continue.

I realize that this decision may create certain operational difficulties, but am confident that these will be of short-

term nature and can be alleviated by careful planning and adjustment of Atlantic Fleet requirements.

It would be appreciated if your time-phased plan for implementing this decision were submitted to the Secretary of Defense by July 1, 1973.

You are also requested to keep him currently informed of the progress being made.

/s/ E.L.R.
5/24/73

137

CRB 116

Declassified/Released on Nov. 6, 1981

CONFIDENTIAL [UNCLASSIFIED]

June 22, 1974

MEMORANDUM FOR: THE SECRETARY OF DEFENSE
THE DIRECTOR OF CENTRAL INTELLIGENCE
THE UNDER SECRETARY OF STATE FOR POLITICAL AFFAIRS

SUBJECT: Culebra Naval Weapons Training

The President has reviewed the study submitted on June 6, 1974 by the Chairman of the NSC Under Secretaries' Committee and the recommendations of the members on the use of Culebra and its Cays for naval weapons training.

The President has decided that:

—weapons training activities on Culebra should be terminated by July 1, 1975,

—weapons training on the Culebra Cays should cease as soon after July 1, 1975 as possible, but in no case should the training be conducted on the Cays later than December 31, 1975.

The Secretary of Defense should consider and select alternative sites for the weapons range activities. In doing so, he should take into account relevant considerations of international law and in particular, U.S. objectives in the Law of the Sea negotiations. The selection of the new site, if it is in Puerto Rico, will be contingent on its being acceptable to the Commonwealth, and the Secretary of Defense should so inform the Governor of Puerto Rico.

The President desires that the Secretary of Defense announce this decision and inform the Congressional leadership.

/s/ Henry A. Kissinger
HENRY A. KISSINGER

cc: Chairman, Joint Chiefs of Staff

138

THE WHITE HOUSE
Washington

April 14, 1975

MEMORANDUM FOR

John A. Wickham, Jr.
Major General, U.S. Army
Military Assistant to the Secretary
Department of Defense

SUBJECT: Culebra Naval Weapons Training

Your memorandum of April 4 with the status report on Culebra is appreciated. In dealing with the termination of training at Culebra, the Department of Defense should continue to be guided by the NSC memorandum of June 22, 1974 on this subject.

/s/ B. Scowcroft
BRENT SCOWCROFT
Lieutenant General, USAF
Deputy Assistant to the President
for National Security Affairs

Attachment

EXH. A118

27 DECEMBER 1972

MEMO:

THE FOLLOWING LETTER HAS BEEN RELEASED TO INTERESTED MEMBERS OF CONGRESS.

CRB 118

In response to Section 207 of the Military Construction Authorization Act of 1972, I am enclosing the study on the weapons training now being conducted in the Culebra complex of the Atlantic Fleet Weapons Range. This study includes a description of such training as well as detailed feasibility studies of five alternative sites. I believe you will find the study thorough, objective, and balanced.

The independent study was carried out by Tippetts-Abbett-McCarthy-Stratton Engineers and Consultants, Battelle Columbus Laboratories, and Palmer and Baker Engineers, incorporated under contract to the Commander-in-Chief Atlantic Fleet. It shows that requirements for the Inner Range (Culebra and Vieques) of the Atlantic Fleet Weapons Range will not change substantially through 1985 although the study predicts a shift in the kind of operations conducted. Naval gunfire support training, the activity conducted on the northwest peninsula of Culebra, is projected to decrease, but air-to-ground weapons training, now conducted on Vieques and several rocks and cays to the west of Culebra, is projected to increase. Based on these requirements the contractors carefully reviewed some 40 sites and did detailed feasibility studies of five sites—Vieques, Mona and Monito, Desecheo, and artificial islands at Barriles Reef to the west of Culebra and at Lang Bank to the northeast of St. Croix.

The contractors concluded that the present Culebra complex is clearly superior in every regard to the alterna-

tives considered, and they recommended that the Navy continue to use the present Culebra complex. They also concluded that in their opinion Vieques was the most advantageous of the other alternatives considered based on the criteria in Section 207 of the Military Construction Authorization Act of 1972.

On the basis of this study my recommendation is that the Navy retain its training targets in the Culebra complex.

I had hoped the study would make possible the transfer away from Culebra of the remaining Navy training operations. In fact, on April 1, 1971 I directed the Navy to initiate land surveys, training maneuver analyses, and engineering studies required to provide the option, if feasible, of moving by June 1975 to a suitable alternative to the target areas on Culebra. I also stated at that time that I would "reappraise the Culebra situation and alternative option(s) from the point of view of national security and the best interests of the people of Puerto Rico by the end of 1972 in order to make a final decision where to relocate the naval training target areas now on Culebra and whether any additional action should be taken."

After reviewing the detailed study, Navy civilian and military leaders and I have concluded that the Culebra complex offers such advantages over all other alternatives studied that none of these other alternatives can be considered reasonable. The most advantageous of the alternatives mentioned by the study would be to relocate the Culebra training targets to the east end of Vieques with one air-to-ground target two miles off the northwest tip of Vieques. However, choosing this alternative would significantly reduce the capability of the Inner Range and would transfer the training activity from an island with 700 inhabitants to one with 7,000 inhabitants. I do not think this would be a prudent course of action.

Weapons systems and training requirements, however, change with time. Accordingly, the Navy will remain abreast of developments that would modify the study conclusions and the Navy's need for the Culebra Range complex. In any event, not later than the early 1980's the Navy will do a detailed study of its need for the Culebra complex after 1985 with a view toward eliminating such need as soon after 1985 as possible.

The Navy will continue to comply fully with my directives of April 1, 1971 and with the terms of its January 11, 1971 agreement with Puerto Rican and Culebran officials. The most important of these directives and terms were the elimination of all training to the east of Culebra, the termination of the use of explosive shells in naval gunfire support training and the restriction of air-to-ground training to rocks and cays to the west of Culebra. Compliance with these terms and directives has significantly reduced the irritations and hazards of Navy training and has increased the benefits to Culebra of the Navy presence. Continued compliance will provide a sound basis for the Culebrans and the Navy to live and work together harmoniously for as long as it is necessary to conduct Navy training in the Culebra area to meet national security requirements.

Sincerely,

/s/ Melvin Laird

THE WHITE HOUSE

Washington

December 15, 1970

Dear Governor Ferre:

It was particularly thoughtful of you to let me have your views on the question of Culebra. I fully appreciate your deep concern about this very complex problem, and I want you to know that all of us in the Federal Government share your sense of urgency in this matter.

As you have noted, the recently enacted Military Construction Authorization Act of 1970 requires a new study by the Department of Defense. You have requested that I "designate some appropriate person or agency to participate in this study with such authority from the President as is necessary to insure that a just and agreeable solution will emerge." By copies of this letter to the Secretary of Defense and the Chairman of the Council on Environmental Quality, I am today directing that the Council take part in the study, acting in an advisory capacity. You may be sure that the Chairman of the Council will be in continuing touch with me on this matter.

Mindful of your comments about Latin America, I am also taking another step consistent with the provisions of the Authorization Act which directs that "all appropriate Federal agencies having jurisdiction or special expertise on the subject matter involved" be consulted. Because of the Department of State's special responsibility, I am requesting that the Secretary of State be consulted throughout the study period with respect to all aspects of the Culebra question pertaining to our foreign relations; especially those with our Central and

South American neighbors. I suggest that you also identify an appropriate person to represent the interests of the Commonwealth in the conduct of this study.

With warm personal regards,

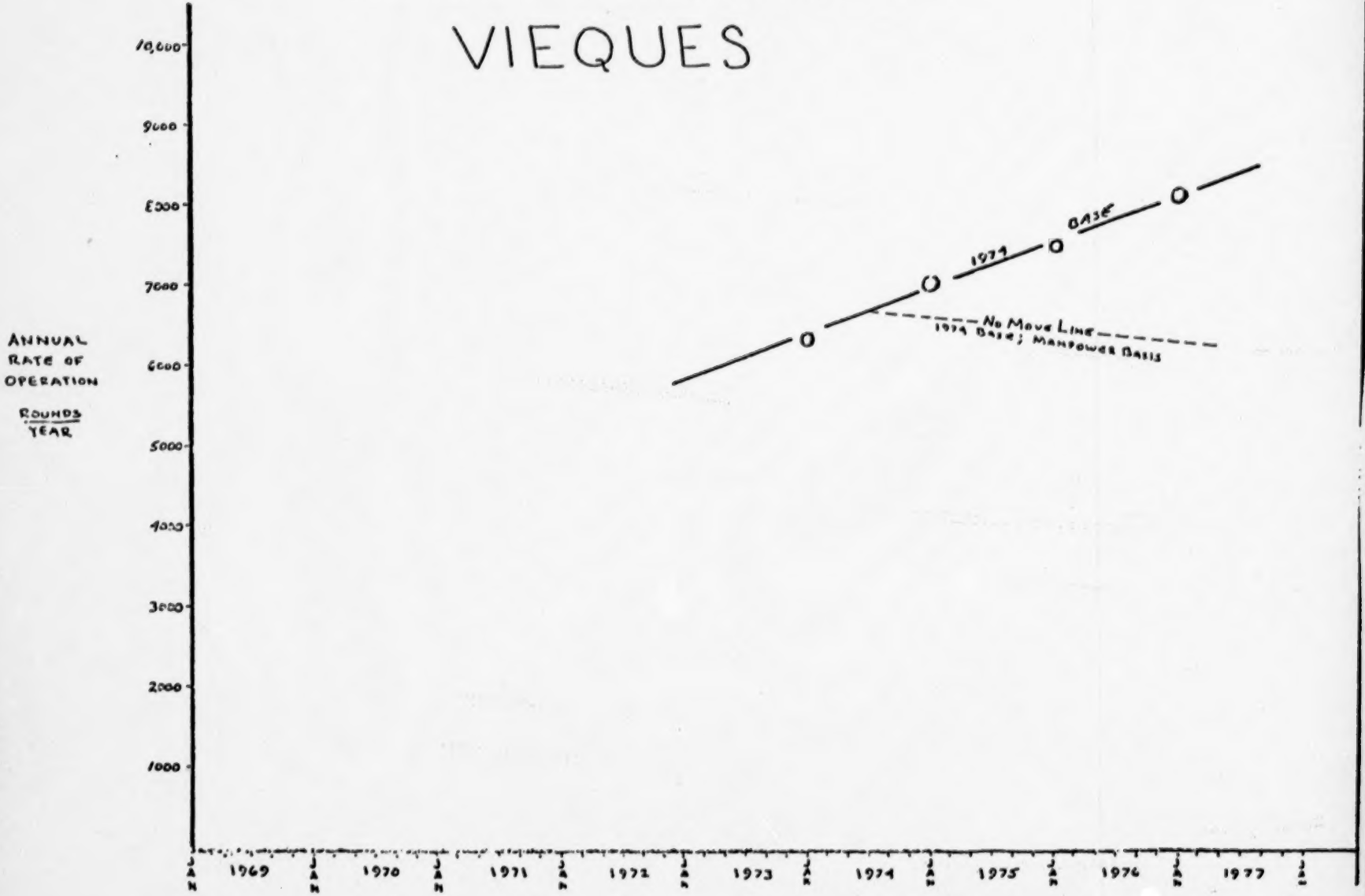
Sincerely,

/s/ Richard Nixon

Honorable Luis A. Ferre
Governor of Puerto Rico
San Juan, Puerto Rico

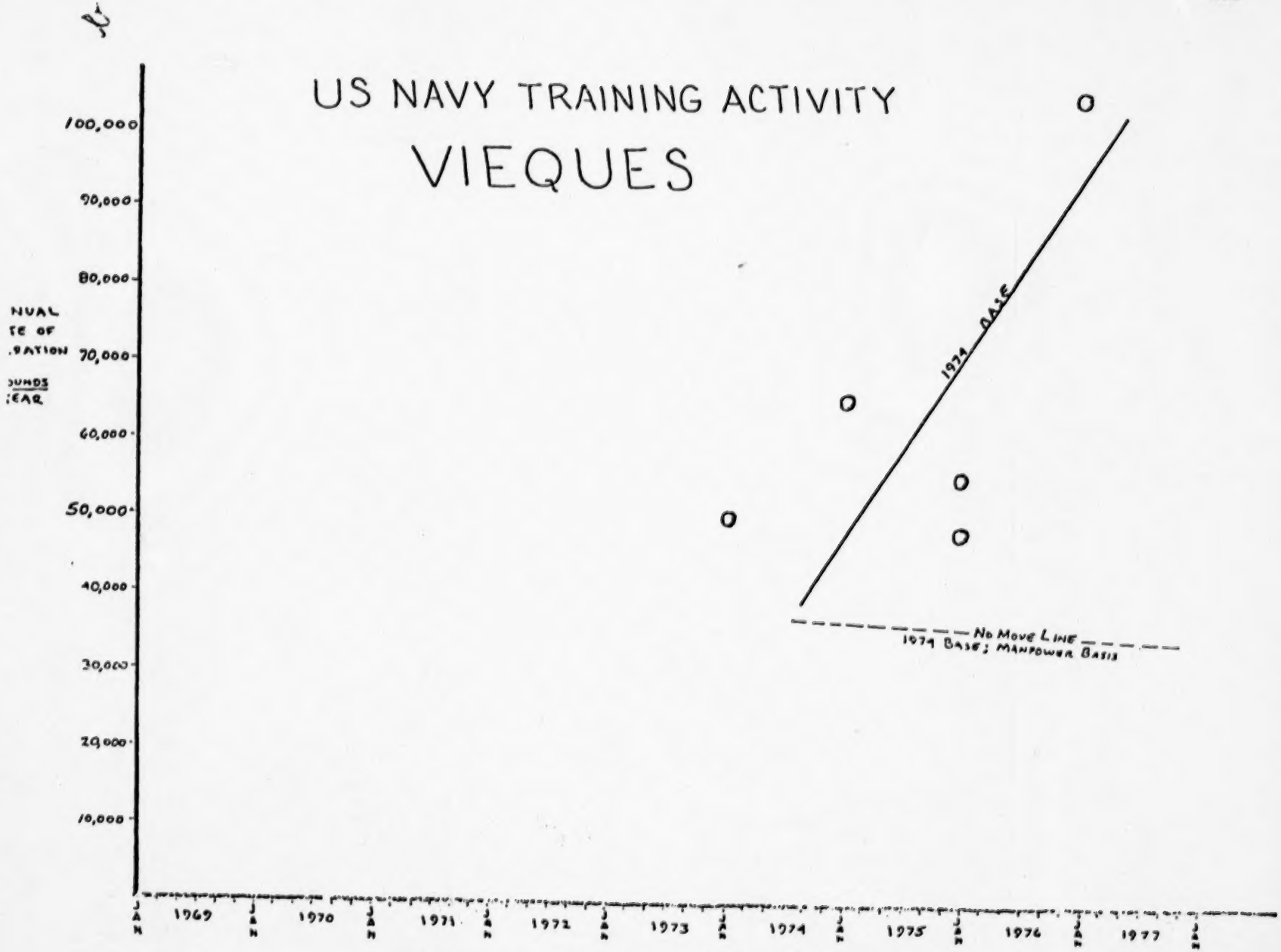
US NAVY TRAINING ACTIVITY

VIEQUES



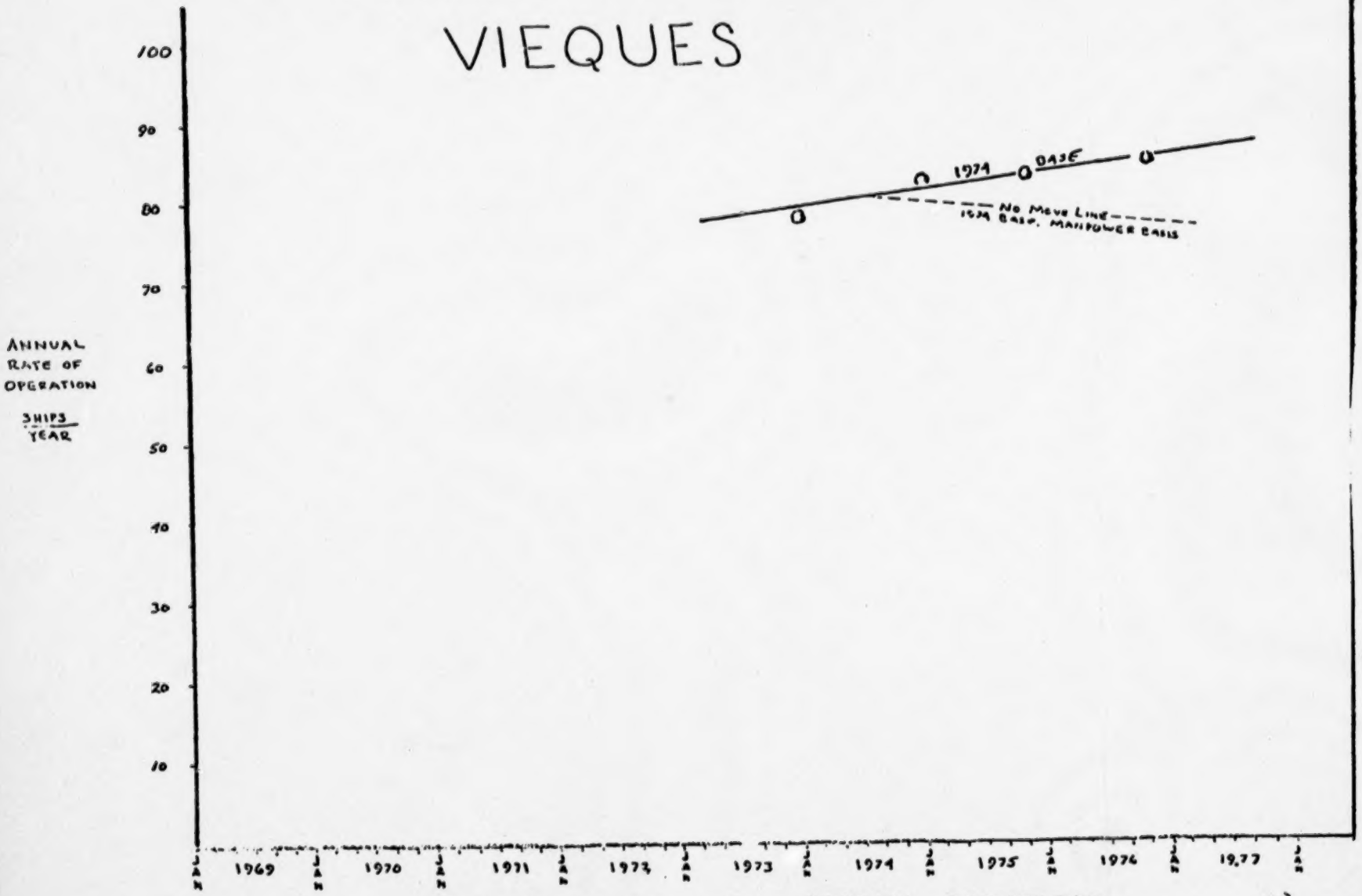
TYPE OF ACTIVITY: NAVAL GUNFIRE

MEASUREMENT INDEX: ROUNDS


US NAVY TRAINING ACTIVITY
VIEQUES
100,000
90,000
80,000
70,000
60,000
50,000
40,000
30,000
20,000
10,000
1974 BASE
No Move Line
1974 Base; Manpower Basis
JAN 1969
JAN 1970
JAN 1971
JAN 1972
JAN 1973
JAN 1974
JAN 1975
JAN 1976
JAN 1977
TYPE OF ACTIVITY: AIR TO GROUND
MEASUREMENT INDEX: ROUNDS

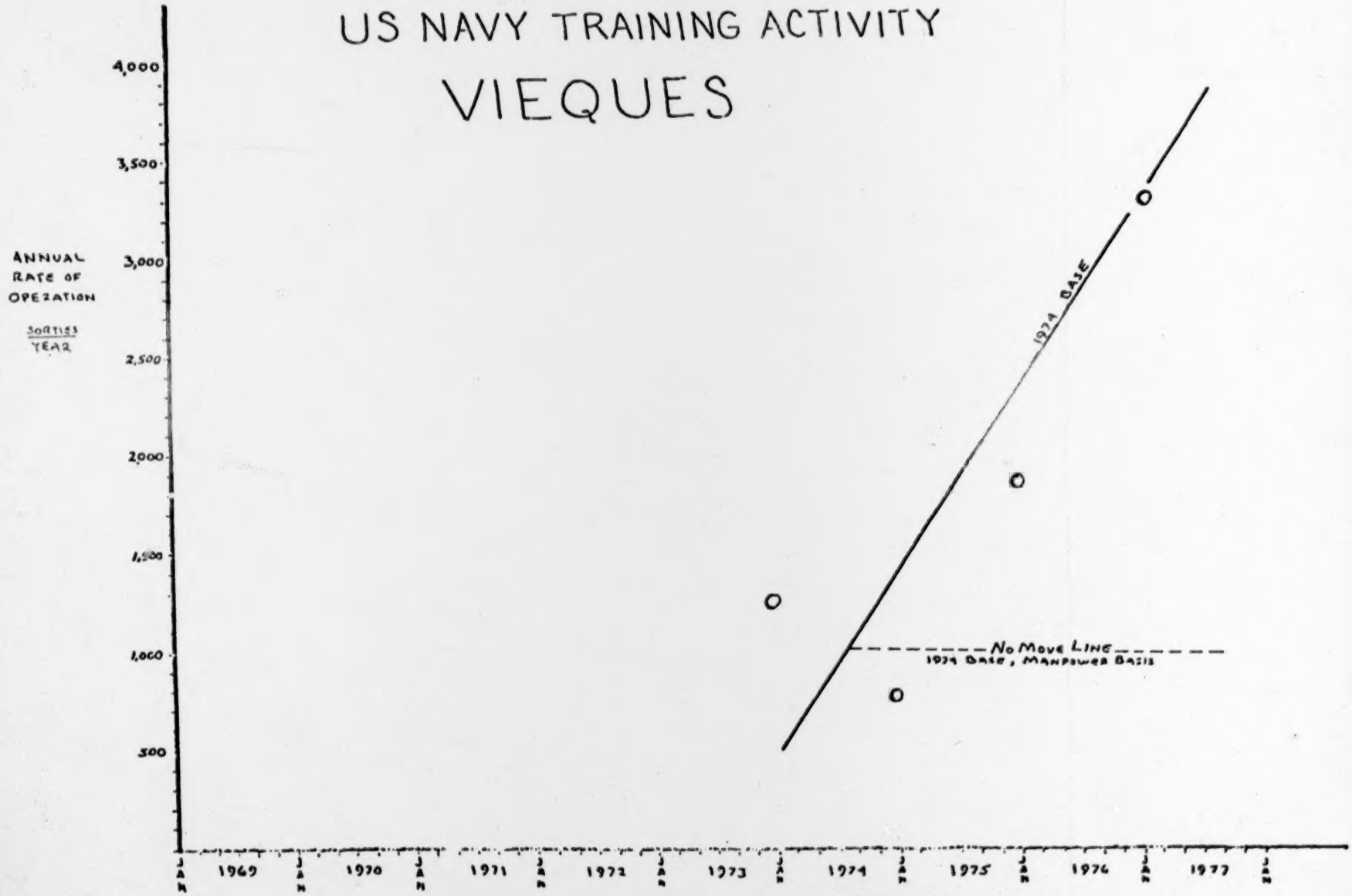
US NAVY TRAINING ACTIVITY

VIEQUES



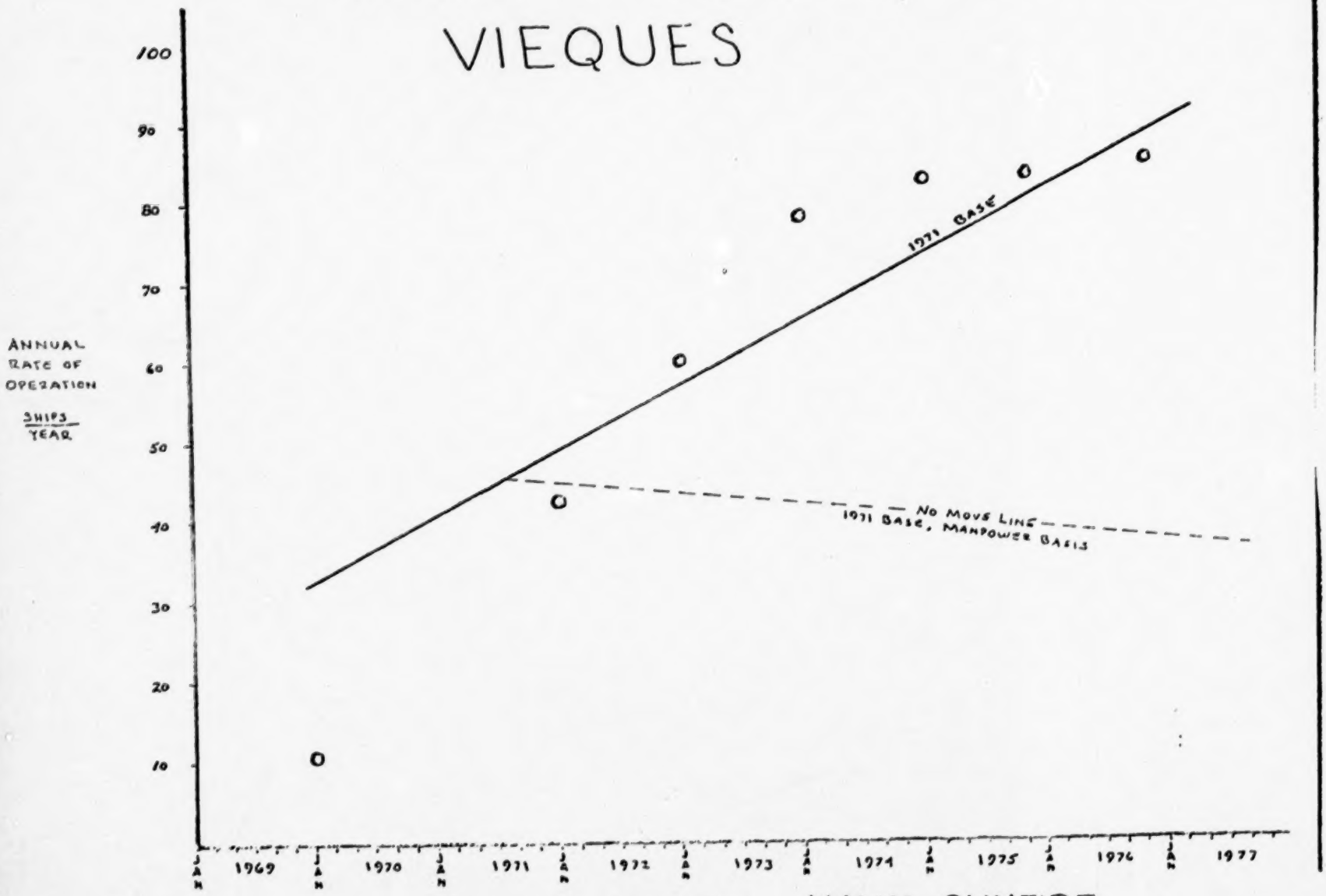
TYPE OF ACTIVITY: NAVAL GUNFIRE

MEASUREMENT INDEX: SHIPS


US NAVY TRAINING ACTIVITY
VIEQUES
ANNUAL RATE OF OPERATION
SORTIES / YEAR
4,000
3,500
3,000
2,500
2,000
1,500
1,000
500
1974 BASE
NO MOVE LINE
1974 BASE, MANPOWER BASIS
JAN 1969
JAN 1970
JAN 1971
JAN 1972
JAN 1973
JAN 1974
JAN 1975
JAN 1976
JAN 1977
TYPE OF ACTIVITY: AIR TO GROUND
MEASUREMENT INDEX: SORTIES

US NAVY TRAINING ACTIVITY

VIEQUES



TYPE OF ACTIVITY: NAVAL GUNFIRE

MEASUREMENT INDEX: SHIPS

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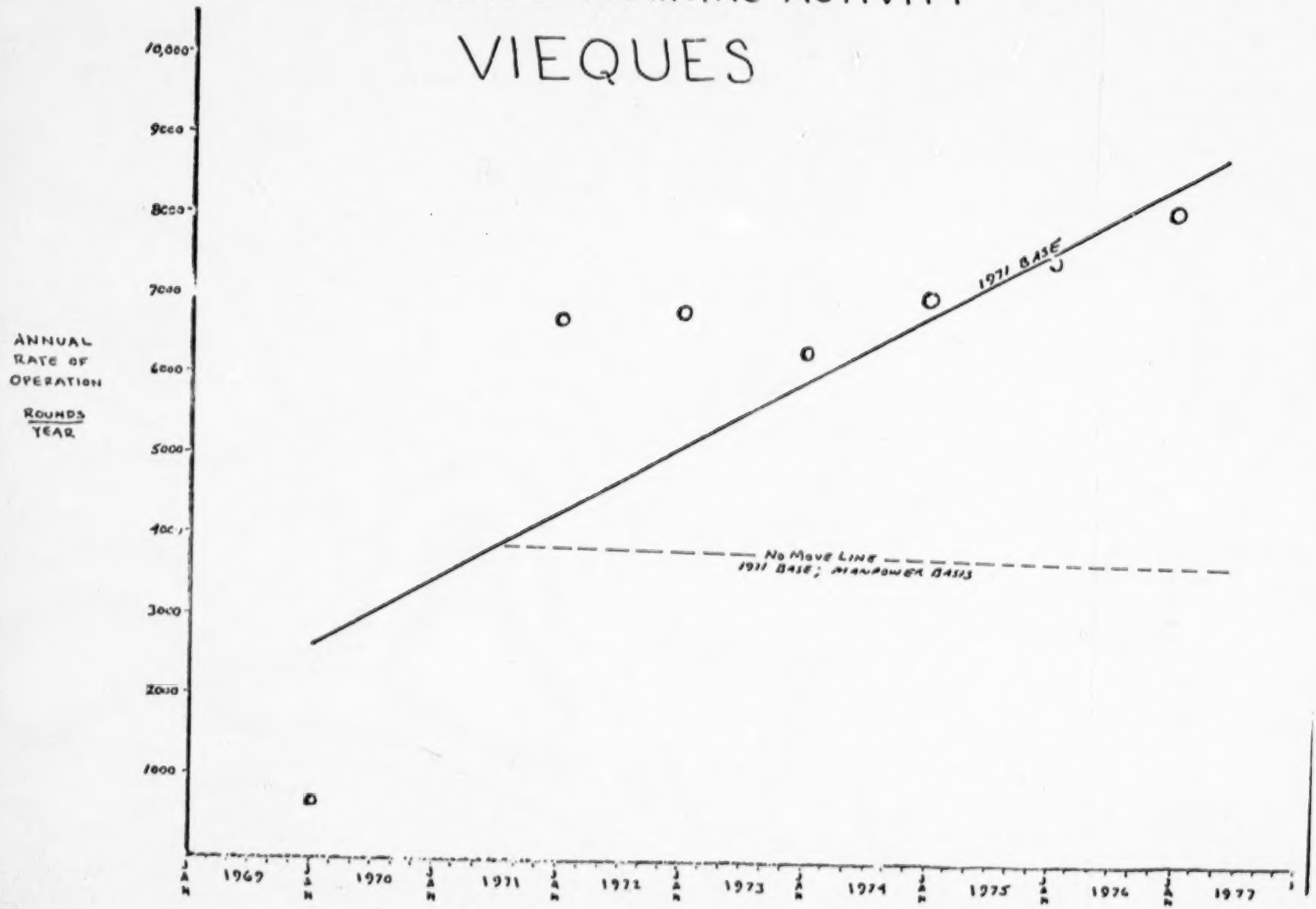
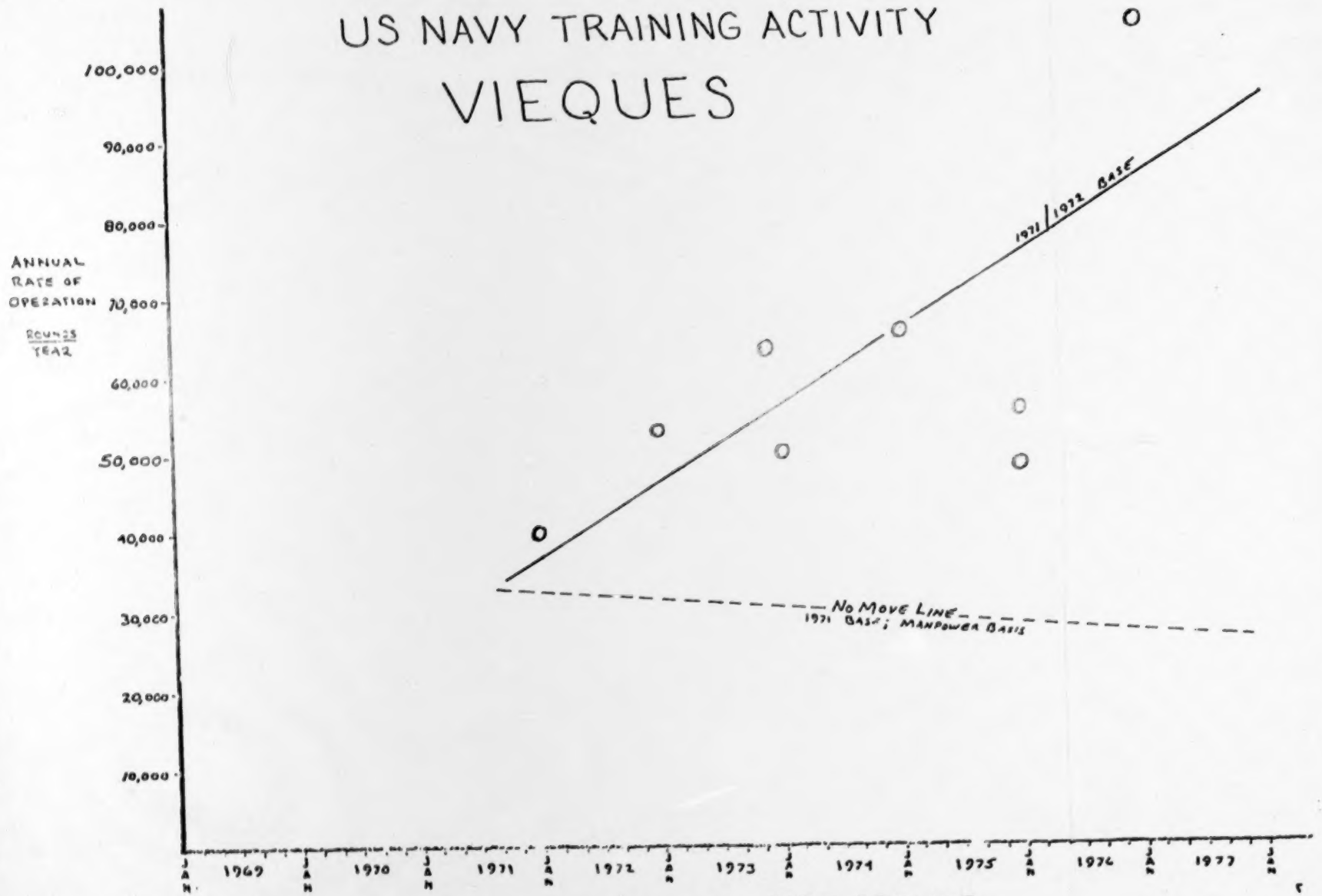
US NAVY TRAINING ACTIVITY

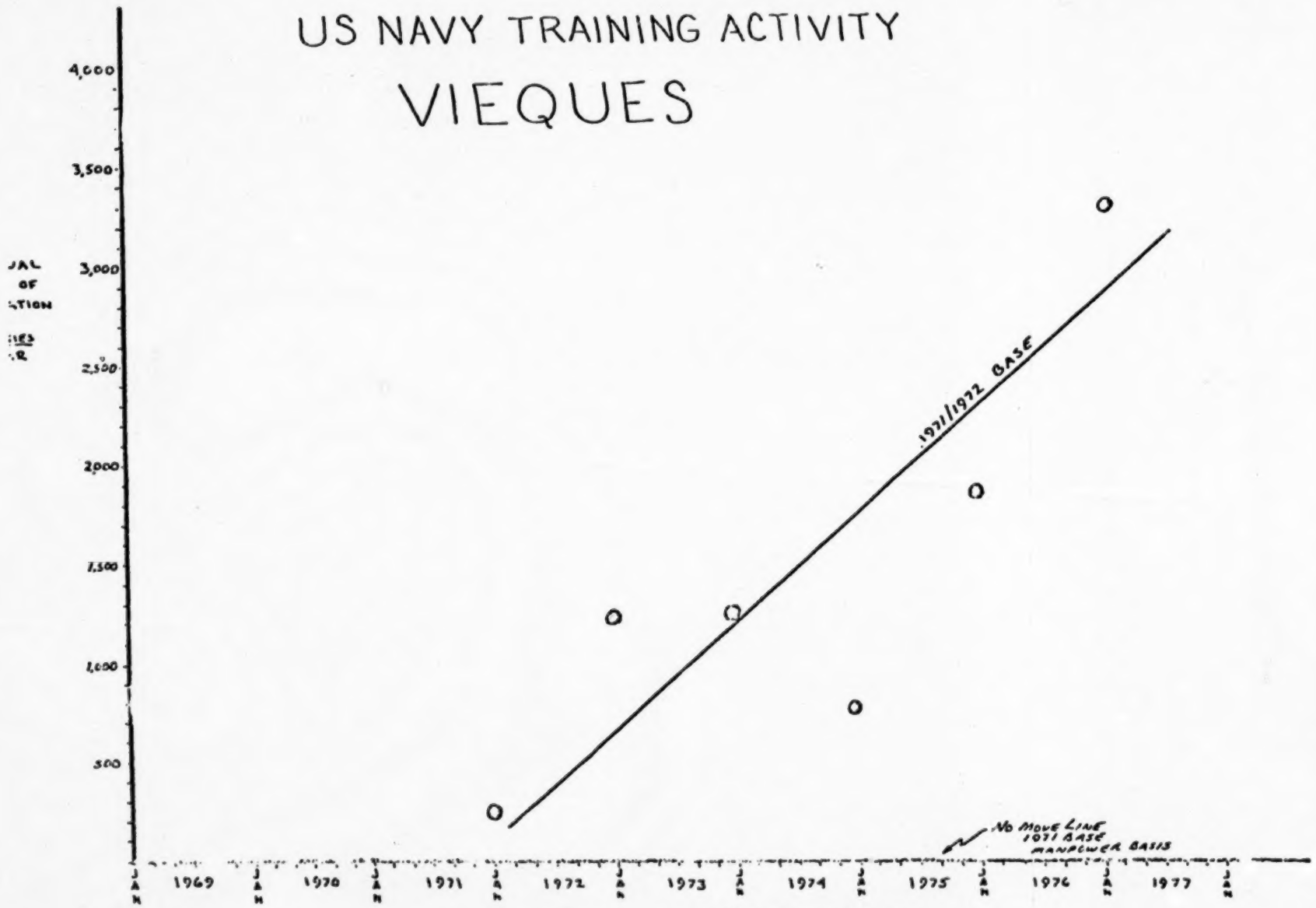
VIEQUES



TYPE OF ACTIVITY: NAVAL GUNFIRE

MEASUREMENT INDEX: ROUNDS


US NAVY TRAINING ACTIVITY
VIEQUES
ANNUAL RATE OF OPERATION
ROUNDS / YEAR
100,000
90,000
80,000
70,000
60,000
50,000
40,000
30,000
20,000
10,000
1971 / 1972 BASE
NO MOVE LINE
1971 BASE; MANPOWER BASIS
JAN 1969
JAN 1970
JAN 1971
JAN 1972
JAN 1973
JAN 1974
JAN 1975
JAN 1976
JAN 1977
JAN
TYPE OF ACTIVITY: AIR TO GROUND
MEASUREMENT INDEX: ROUNDS


US NAVY TRAINING ACTIVITY
VIEQUES
4,000
3,500
3,000
2,500
2,000
1,500
1,000
500
1971/1972 BASE
NO MOVE LINE
1971 BASE
MANPOWER BASIS
JAN 1969
JAN 1970
JAN 1971
JAN 1972
JAN 1973
JAN 1974
JAN 1975
JAN 1976
JAN 1977
TYPE OF ACTIVITY: AIR TO GROUND
MEASUREMENT INDEX: SORTIES

UNCLASSIFIED

	PP	PR		UUUU		3201	252128Z	MAY	73

FROM: CNO WASHINGTON DC

TO: CINCLANTFLT NORFOLK VA

INFO COMTEN/COMCARIBSEAFRON SAN JUAN P R

COMNAVAIRLANT NORFOLK VA

LANTFLTWPNRAN ROOS RDS P R

NAVSTA ROOS RDS P R

NAVFACENGCOM WASHINGTON DC

NAVAIRSYSCOM WASHINGTON DC

ICLAS //04000//

FENSE DECISION ON CULEBRA

THE SECRETARY OF DEFENSE FORWARDED ON 24 MAY 73 THE FOL LETTER TO THE CHAIRMEN OF THE SENATE AND HOUSE ARMED SERVICES COMMITTEES AND APPROPRIATIONS COMMITTEES: QUOTE

DURING THE COURSE OF MY CONFIRMATION HEARINGS BEFORE THE SENATE LAST JANUARY, I PROMISED THAT I WOULD CAREFULLY STUDY THE NECESSITY OF CONTINUING TO CONDUCT NAVY WEAPONS TRAINING OPERATIONS ON AND NEAR THE ISLAND OF CULEBRA. MY COMMITMENT WAS SUBSEQUENTLY REAFFIRMED TO OTHER MEMBERS OF THE CONGRESS WHO REQUESTED MY VIEWS ON LEGISLATION PROPOSED IN BOTH THE HOUSE AND THE SENATE WHICH WOULD

DRAFTER: OP-40 (405G) (25 MAY 73) NCSC
DIST: 00...09...090...03...04...05...5X3...NAVY...OLA...CHINFO...

CAPT [illegible] JENSEN, JR., OP-405G, 73611 048
RADM CLIFFORD, JR., RADM, OP-40 40
408
405

252128Z MAY 73

JOINT MESSAGEFORM UNCLASSIFIED

FROM: 02 06 3207

REQUIRE THE NAVY TO TERMINATE ITS CULEBRA OPERATIONS BY JULY 1, 1975.

I HAVE COMPLETED MY REVIEW. IN THE PROCESS, I HAVE GIVEN CAREFUL CONSIDERATION TO THE CONCLUSIONS OF THE STUDIES OF THE PROBLEM COMPLETED IN THE DEPARTMENT OF DEFENSE AT THE DIRECTION OF THE CONGRESS. I HAVE DISCUSSED THE MATTER WITH NAVY OFFICIALS AND MEMBERS OF MY OFFICE. I HAVE ALSO CONSULTED VARIOUS MEMBERS OF THE CONGRESS AND MET WITH PUERTO RICAN OFFICIALS.

CULEBRA CANNOT BE CONSIDERED IN ISOLATION FROM OTHER NAVY INTERESTS IN THE AREA. ITS TARGET COMPLEX AND SUPPORTING FACILITIES ARE IMPORTANT PARTS OF THE ATLANTIC FLEET WEAPONS RANGE AND ARE CLEARLY RELATED TO THE FLEET MARINE FORCE TRAINING AREAS ON THE NEAR-BY ISLAND OF VIEQUES. THESE VITAL NAVY AND MARINE CORPS FACILITIES PROVIDE THE TRAINING REQUIRED TO MAINTAIN THE ATLANTIC FLEET IN A HIGH STATE OF OPERATIONAL READINESS. THEIR CONTINUED OPERATION IN THE YEARS AHEAD IS ESSENTIAL. THIS OPERATIONAL READINESS GOAL WHICH HAS BEEN THE PRIMARY CONSIDERATION IN MY REVIEW, INVOLVES MANY FACTORS.

CONSEQUENTLY ANY MOVE OF NAVAL ACTIVITIES FROM CULEBRA MUST BE TO A LOCATION IN THE AREA OF PUERTO RICO WHICH WOULD SATISFY THE

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PAGE 13 OF 06 | 3201

FOREGOING MILITARY OPERATIONAL REQUIREMENTS. THE MOST RECENT STUDY FORWARDED TO THE SECRETARY OF DEFENSE BY THE NAVY IN DECEMBER 1972 CONCLUDED THAT ALTHOUGH THERE WERE SOME OPERATIONAL AND COST ADVANTAGES TO REMAINING ON CULEBRA, SEVERAL ALTERNATIVE SITES USING OTHER ISLANDS OFF PUERTO RICO WERE ALSO SUITABLE FROM AN OPERATIONAL VIEWPOINT AND WOULD MEET MILITARY REQUIREMENTS.

BUT ONCE MILITARY REQUIREMENTS ARE MET, OTHER CONSIDERATIONS MUST BE ADDRESSED. THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HAS DIRECTED THAT THE DEPARTMENT OF THE INTERIOR AND THE COMMONWEALTH OF PUERTO RICO CONDUCT A JOINT STUDY TO DETERMINE THE OPTIMUM LAND USE FOR CULEBRA. I UNDERSTAND THAT STUDY WILL CONSIDER THE OPPORTUNITIES AVAILABLE ON THE ISLAND FOR PLANT AND WILD LIFE CONSERVATION AND PUBLIC RECREATION

FINALLY, THERE IS THE COMMON AIM OF PUERTO RICAN AND DEFENSE OFFICIALS, AS WELL AS MEMBERS OF THE CONGRESS TO REDUCE AS MUCH AS POSSIBLE THE IMPACT OF NAVY TRAINING ACTIVITIES ON LOCAL INHABITANTS ALL FOUR GOVERNORS OF PUERTO RICO, PAST AND PRESENT, REGARDLESS OF PARTY, HAVE JOINED IN SUPPORT OF THE PROPOSED LEGISLATION THAT THE NAVY MOVE ITS ACTIVITIES FROM CULEBRA. THIS LEGISLATION HAS

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SECURITY CLASSIFICATION UNCLASSIFIED 252128Z MAY 73

JOINT MESSAGEFORM UNCLASSIFIED

14 05 3231

ATTRACTED SUBSTANTIAL SUPPORT IN THE SENATE AND THE HOUSE.

A SOLUTION TO THE PROBLEM WHICH SHOULD RECONCILE ALL THE RELEVANT FACTORS INVOLVED WOULD ALSO, IN MY JUDGMENT, FACILITATE THE CONTINUED LONG-TERM OPERATION OF THE ATLANTIC FLEET WEAPONS RANGE AND THE FLEET MARINE FORCE TRAINING AREA.

ACCORDINGLY, I HAVE DECIDED IT WOULD BE IN THE LONG-RANGE INTEREST OF THE VARIOUS PARTIES TO MOVE THE CURRENT NAVY TRAINING ACTIVITIES BY JULY 1, 1975 FROM THE CULEBRA COMPLEX EAST OF PUERTO RICO TO THE UNINHABITED ISLANDS OF DESECHEO AND MONITO OFF THE WESTERN COAST OF PUERTO RICO, PROVIDED:

1. THAT THE CONGRESS AUTHORIZES AND APPROPRIATES THE FUNDS REQUIRED, AND

2. THAT A SATISFACTORY OVERALL ARRANGEMENT CAN BE WORKED OUT WITH THE GOVERNMENT OF PUERTO RICO FOR CARRYING OUT THE PROPOSED MOVE AND FOR ENSURING THE LONG TERM CONTINUATION OF THE ATLANTIC FLEET WEAPONS RANGE AND THE FLEET MARINE FORCE TRAINING AREA

UNTIL THESE PROVISIONS ARE MET AND THE REQUIREMENTS OF SECTION 102(2)C OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 ARE SATISFIED, CURRENT NAVY READINESS TRAINING IN THE CULEBRA COMPLEX MUST CONTINUE.

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UNCLASSIFIED 252128Z MAY 73

UNCLASSIFIED

PAGE 06 OF 06 — 3201

I HAVE INFORMED SECRETARY OF DEFENSE-DESIGNATE, JAMES E. SCHLESINGER, OF THIS DECISION. UNQUOTE

2A. THE SECRETARY OF DEFENSE TRANSMITTED THE FOL MEMORANDUM TO THE SECRETARY OF THE NAVY ON 24 MAY 73: QUOTE

AS YOU KNOW, DURING MY CONFIRMATION HEARINGS BEFORE THE SENATE ARMED SERVICES COMMITTEE IN JANUARY, I INDICATED THAT I WOULD LOOK INTO THE CULEBRA SITUATION. IN KEEPING THIS PLEDGE, I HAVE REVIEWED THE LENGTHY HISTORY OF THIS PROBLEM AND, IN PARTICULAR, THE VIEWS OF THE DEPARTMENT OF THE NAVY.

IN MY JUDGMENT, IT WOULD BE IN THE LONG-RANGE INTEREST OF THE DEPARTMENT OF DEFENSE TO MOVE THE CURRENT NAVY TRAINING ACTIVITIES BY JULY 1, 1975, FROM THE CULEBRA COMPLEX TO THE ISLANDS OF DESECHEO AND MONITO, PROVIDED:

1. THAT THE CONGRESS AUTHORIZES AND APPROPRIATES THE FUNDS REQUIRED; AND

2. THAT A SATISFACTORY OVERALL ARRANGEMENT CAN BE WORKED OUT WITH THE GOVERNMENT OF PUERTO RICO FOR CARRYING OUT THE PROPOSED MOVE AND FOR INSURING THE LONG-TERM CONTINUATION OF THE ATLANTIC FLEET WEAPONS RANGE AND THE FLEET MARINE FORCE TRAINING AREA.

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UNCLASSIFIED 252128Z MAY 73

JOINT [illegible] AGEFORM

UNCLASSIFIED

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UNTIL THESE PROVISIONS ARE MET, AND THE REQUIREMENTS OF SECTION 1022C OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 ARE SATISIFIED, CURRENT NAVY ACTIVITIES IN THE CULEBRA COMPLEX MUST CONTINUE.

I REALIZE THAT THIS DECISION MAY CREATE CERTAIN OPERATIONAL DIFFICULTIES, BUT AM CONFIDENT THAT THESE WILL BE OF SHORT-TERM NATURE AND CAN BE ALLEVIATED BY CAREFUL PLANNING AND ADJUSTMENT OF ATLANTIC FLEET REQUIREMENTS.

IT WOULD BE APPRECIATED IF YOUR TIME-PHASED PLAN FOR IMPLEMENTING THIS DECISION WERE SUBMITTED TO THE SECRETARY OF DEFENSE BY JULY 1, 1973.

YOU ARE ALSO REQUESTED TO KEEP HIM CURRENTLY INFORMED OF THE PROGRESS BEING MADE. UNQUOTE.

3. TASKING FOR THE FORMULATION OF A TIME-PHASED IMPLEMENTATION PLAN FOR THE RELOCATION FROM THE CULEBRA COMPLEX TO DESECHEO AND MONITO WILL BE PROMULGATED BY CNO MESSAGE [illegible].

VISTA:

COMMONWEALTH OF PUERTO RICO

OFFICE OF GOVERNOR

La Fortaleza, San Juan

[SEAL]

June 20, 1975

The Honorable James R. Schlesinger
Secretary of Defense
The Pentagon
Washington, D.C. 20301

Dear Mr. Secretary:

Puerto Rico has long considered the conduct of naval weapons training on the tiny, inhabited Island of Culebra and on the nearby Culebra Cays a serious threat to the health, safety and general welfare of the inhabitants of Culebra. For many years we have sought permanent termination of this training. Now, due in no small measure to the splendid, constructive role of your staff, we are on the verge of achieving peace and tranquility for the residents of Culebra and relocation of Navy training to a suitable, uninhabited site. I am delighted to be able to proffer in this letter a second offer by Puerto Rico relating to an uninhabited site, but first, in order to place this offer in proper perspective, I would like to review briefly the recent history of executive and legislative actions in regard to Culebra and Puerto Rico's efforts to assist the United States Navy in relocating this training.

When he became Secretary of Defense the Honorable Elliot L. Richardson fulfilled a commitment made during the course of his confirmation hearings to conduct a thorough review of the policy of the Department of Defense on the Culebra question. This review culminated

in Secretary Richardson's decision on May 24, 1973, that:

> "it would be in the long-range interest of the various parties to move the current Navy training activities by July 1, 1975 from the Culebra complex east of Puerto Rico to the uninhabited islands of Desecheo and Monito off the western coast of Puerto Rico, provided:
>
> 1. That the Congress authorizes and appropriates the funds required, and
>
> 2. That a satisfactory overall arrangement can be worked out with the Government of Puerto Rico for carrying out the proposed move and for ensuring the long term continuation of the Atlantic Fleet Weapons Range and the Fleet Marine Force training area."

In response to a question raised during the course of the June 18, 1973, Senate confirmation hearings on your nomination to serve as Secretary of Defense you stated:

> "Secretary Richardson informed me of his decision on Culebra before he announced it, and I accept it as a policy designed, in Secretary Richardson's words, to 'facilitate the continued long-term operation of the Atlantic Fleet Weapons Range and the Fleet Marine Force training area.'
>
> The Department will work with the Congress and the Commonwealth of Puerto Rico to jointly meet the conditions upon which Secretary Richardson's decisions was [sic] predicated."

The first condition of the Defense Department policy enunciated by Secretary Richardson and reaffirmed by you was met when the Military Construction Authorization Act, 1974,[1] and the Military Construction Appro-

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[1] Pub. L. No. 93-166 § 204, 87 Stat. 668-69 (1973).

priations Act, 1974[2] were approved on November 29, 1973, and on December 20, 1973, respectively. In those acts, Congress authorized and appropriated $12 million for the relocation of the training being conducted at the Culebra complex, subject to the conditions expressed in the authorizing act:

> "(b) The relocation of such operations from the northwest peninsula of the island of Culebra is expressly conditioned upon the conclusion of a satisfactory agreement to be negotiated by the Secretary of the Navy, or his designee, with the Commonwealth of Puerto Rico and reported to the Committees on Armed Services of the Senate and the House of Representatives prior to execution of such agreement. The agreement shall provide, among other things, that the Commonwealth of Puerto Rico shall insure that (1) Commonwealth lands suitable for carrying out operations of the type referred to in subsection (a) will be made available for the long term continued use of the Atlantic Fleet Weapons Range and Fleet Marine Forces training areas by the Navy, including, but not limited to, present areas and facilities on the island of Vieques, and (2) any proposed facility or activity which would interfere with the Navy training mission will not be undertaken, including the proposed deep water super-port on the island of Mona, in the event that such agreement includes the use by the Navy of such island or the area adjacent to such island.
>
> (c) Notwithstanding any other provision of law, the present bombardment area on the island of Culebra shall not be utilized for any purpose that would require decontamination at the expense of the United States. Any lands sold, transferred, or otherwise disposed of by the United States as a result of

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[2] Pub. L. No. 93-194, 87 Stat. 766 (1973): *See* H. Rep. No. 93-693 (Comm. of Conference).

> the relocation of the operations referred to in subsection (a) may be sold, transferred, or otherwise disposed of only for public park or public recreational purposes."

The second condition prescribed by Secretary Richardson as well as the additional conditions imposed by Congress, were satisfied on March 7, 1974. On that date, I wrote a letter to the Honorable John W. Warner, then Secretary of the Navy, in which I stated that:

> "My Government is committed, without qualification, to support the transfer of Navy operations from Culebra to the uninhabited Islands of Desecheo and Monito."

This reiterated a commitment I personally made to Secretary of Defense Elliot Richardson, to members of the House Armed Services Committee on November 8, 1973, during a special appearance I made before the House conferees on the Military Construction Authorization Act of 1974 at the gracious invitation of the Chairman, Congressman Edward Hebert, and to Secretary Warner, himself, in an earlier letter dated November 26, 1973.

In this same letter of March 7, 1974, I acceded fully to the statutory requirements of the Military Construction Authorization Act of 1974, including making available for Navy training those Commonwealth lands Secretary Richardson and you found "suitable for carrying out operations of the type," that was to be relocated from Culebra and the Culebra Cays, the very same lands that were specifically contemplated in the acts of Congress. Indeed, I went beyond the strict letter of the law by offering portions of the island of Mona in addition to the island of Monito:

> "Accordingly, and in conformity with last year's federal Culebra legislation, the Commonwealth of Puerto Rico hereby agrees to make available to the

United States Navy for the long-term continued use of the Atlantic Fleet Weapons Range and Fleet Marine Force Training Area by the Navy: (1) the island of Monito and portions of the island of Mona reasonably required to facilitate weapons training at the island of Monito relocated from the Culebra complex, and (2) present areas and facilities on the island of Vieques for continuation of training now conducted there. I understand that Desecheo now is in federal ownership and available from the property inventory of General Services Administration for selection by the United States Navy.

The Commonwealth Government hereby agrees further that it will not undertake any proposed facility or activity which would interfere with the Navy training mission. Specifically including construction of the proposed deep water superport on the island of Mona if this project would interfere with the Navy training mission at Desecheo and Monito."

At the end of my letter of March 7, 1974, I expressed my hope and intention that:

"my letter signed today, together with whatever transmittal letter you wish to send, will constitute the 'satisfactory agreement' between the Navy and the Commonwealth of Puerto Rico required to be reported to the Committees on Armed Services of the Senate and the House of Representatives and to be reported by the Secretary of Defense to the Committees on Appropriations of the Senate and the House of Representatives. If, however, you require any additional action on my part to effect the relocation of the Culebra weapons training complex, I am at your disposal and hope we can expedite this transfer in every way possible."

Secretary Warner expressed his desire for a formal written agreement detailing the commitment contained in my letter of March 7, 1974. Immediately I designated

my representative to assist in this undertaking. Beginning with my letter of March 7, 1974, and throughout the period that followed, Puerto Rico continuously and strenuously urged the Navy to provide whatever form of written agreement it desired to expedite the formal conclusion of the negotiations called for by the Culebra legislation, but no draft agreement was ever submitted to Puerto Rico by the United States Navy. At no time did the discussions that ensued produce any request of Puerto Rico that was not fully satisfied. Implicitly acknowledging this fact and the suitability of the Commonwealth lands offered for carrying out the training operations that were to be relocated from Culebra and the Culebra Cays, the Navy issued a press release on April 2, 1974, announcing that it had reached "substantial agreement" with Puerto Rico on the transfer of Navy training "from the Culebra complex to the islands of Desecheo and Monito."

On May 8, 1974, the Navy reversed itself and declined to accept Puerto Rico's offer of the site you and your predecessor specified—the site contemplated by Congress at the time of the enactment of the Culebra legislation—and temporarily suspended negotiations as a result of perceived "implications that construction of a weapons range in the Mona passage (adjacent to Desecheo and Monito) would have on the integrity of our negotiating position on uninhibited transit through straits," pending further review of this question by the Under Secretary's Committee of the National Security Council.

Although I understand that this decision was based on the political judgment of the United States representatives at the Third United Nations Conference on the Law of the Sea regarding the negotiating ambience at this meeting, at the time I was advised by counsel who extensively researched the question that, from a strictly legal standpoint, neither existing international law nor then seriously proposed changes in international law impeded or threatened to impede the contemplated use of Monito and Desecheo by the Navy.

On June 5, 1974, the United States Senate unanimously approved the following amendment to what became the Department of Defense Appropriation Authorization Act, 1975:

> "Notwithstanding any other provision of law, no funds contained in this or any other Act shall be expended by the Department of the Navy for training operations at the Culebra complex involving the firing of any shells, missiles, or other projectiles from ships or the dropping of any bombs, strafing, firing of rockets or missiles, or the launching of any other projectiles from aircraft at Culebra or at any keys within three nautical miles thereof after December 31, 1975."

While this amendment was under consideration in a conference committee, and after receiving a study and recommendations from the Under Secretary's Committee of the National Security Council, the President of the United States decided on June 22, 1974, that:

> "—weapons training activities on Culebra should be terminated by July 1, 1975,
>
> —weapons training on the Culebra Cays should cease as soon after July 1, 1975 as possible, but in no case should the training be conducted on the Cays later than December 31, 1975."

The President instructed you to select an alternative site for training activities whether or not within Puerto Rico but specified, however, that "the selection of the new site, if it is in Puerto Rico, will be contingent on its being acceptable to the Commonwealth."

As you will recall, simultaneously with our joint announcement in Washington and San Juan of the President's decision, we jointly announced the formation of a Commission to assist us in implementing this decision. Although Puerto Rico already had agreed to provide the alternative site originally designated by your predecessor and reaffirmed by you—the site Congress clearly had

in mind in enacting the Culebra legislation—and Puerto Rico otherwise satisfied all pre-conditions to the relocation of the Culebra training, I instructed the representatives of Puerto Rico on the Joint Commission to spare no effort in seeking out additional new alternatives to facilitate the Navy's relocation even if this went clearly beyond the statutory requirement.

I am satisfied and I hope you are as well that our Commission worked with great diligence and dedication to provide a relocation site the Navy would find more to its liking than the site originally selected by your predecessor. After a thorough and conscientious review of possible alternative sites in Puerto Rico additional to the site already offered, the Commission concluded that no site in Puerto Rico is acceptable for this purpose because no other uninhabited site could be identified in our densely populated island.

I am delighted to report, however, that Puerto Rico has succeeded not only in identifying a most promising uninhabited potential relocation site—Dog Island—but on April 17, 1975, following extensive negotiations, the Puerto Rico Land Administration executed an agreement with the private owners of Dog Island conferring an option to take a forty year lease on this island subject to the consent of the United Kingdom, the United States and the Council of Anguilla for use by the United States Navy as a weapons training site. In this agreement it is expressed to be the intention of the Puerto Rico Land Administration:

> "to assign its right hereto to the United States Navy or the Department of Defense of the United States of America or the United States Government or a company controlled by any or all of the foregoing, to make available to the United States Navy an additional alternative training site to which it can relocate its training operations conducted at Culebra and the keys adjacent thereto with a view to the option granted herein being exercised by and the lease being granted to the United States Navy

or the Department of Defense of the United States of America or the United States Government or a company controlled by any or all of the foregoing."

Considerable effort went into negotiating this agreement and the accompanying lease. In addition, representatives of Puerto Rico have expended great effort in perfecting Puerto Rico's interest in Dog Island by obtaining various directoral and shareholder ratifications, the execution of other ancillary corporate agreements and documents and by obtaining a detailed legal opinion on questions of Anguillan law. I note with gratitude the successful efforts of the Defense Department and State Department in ongoing discussions with the United Kingdom to make the Dog Island site the very real option it is today.

Puerto Rico is prepared to assign its interest under the agreement conferring an option to take a lease to the United States Department of Defense or any appropriate entity designated by the Secretary of Defense or, if in your judgment it would better serve the interest of the United States and you would prefer, Puerto Rico is prepared to relinquish entirely its interest under the agreement conferring an option to take a lease so that the Dog Island site can be obtained exclusively in the context of ongoing government to government discussions between the United States and the United Kingdom.

Enclosed for your consideration in making this decision are conformed copies of the agreement of April 17, 1975, conferring an option to take a lease and additional pertinent documentation obtained by Puerto Rico.

I want you to know that I deeply appreciate your assistance in bringing this sensitive and difficult problem to a mutually satisfactory conclusion and especially the dedicated efforts of Mr. Stuart French and Mr. Pedro Sanjuan.

Cordially yours,

/s/ Rafael Hernández-Colón
RAFAEL HERNANDEZ-COLON
Governor

JOINT MESSAGEFORM

DTG: 041550Z03 XG XG 1 AAAA

FROM: CNO WASHINGTON DC

TO: CINCLANTFLT NORFOLK VA

INFO COMCARIBSEAFRON ROOSEVELT ROADS PR

~~C O N F I D E N T I A L~~ SEPECAT EXCLUSIVE //N00002//

FOR ADM COUSINS INFOR RADM RAMAGE FROM HOLLOWAY

CULEBRA NEGOTIATIONS (U)

A. CINCLANTFLT 191535Z FEB 75

B. CINCLANTFLT 191546Z FEB 75

1. SET SUMMARY - THE CULEBRA ISSUE HAS BECOME, APPARENTLY, A "SAVE VIEQUES" PROBLEM WITH TWO DIVERGENT VIEWS ON THE SOLUTION. OSD REPRESENTATIVES BELIEVE RELOCATION OF CULEBRA TRAINING TO DOG ISLAND MAY AVOID A CONFLICT OVER VIEQUES WHILE NAVY MAINTAINS THIS EVENT MIGHT GIVE THE COMMONWEALTH LEVERAGE TO REMOVE EXISTING TRAINING FROM VIEQUES. DOG ISLAND IS UNDESIRABLE OPERATIONALLY AND COST WISE, AND CONTINUING TO DISCUSS IT WITH BRITISH IS RISKY, BUT ALTERNATIVE OF PRESSING OSD AND CONGRESS TO ACCEPT VIEQUES AS SOLUTION AT THIS TIME IS WORSE. END OF SUMMARY.

2. SET THE CULEBRA ISSUE APPEARS TO BE REACHING ANOTHER TURNING POINT AS YOUR MESSAGE, REFERENCE (A) NOTES. YOUR VIEWS ON THE

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OO 09 04 NCSC 06 05 03

D. L. MCCORVEY, JR. / 4056,

X55065, 24 FEB 75

SPECIAL INSTRUCTIONS

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DD FORM 1 JUL 73 173 /OCR/ S/N 0102-014-6630 1633

SUBJECT ARE MUCH APPRECIATED AND ARE RIGHT ON TARGET. OUR COMMON GOAL WITHIN NAVY IS THE UNENCUMBERED RETENTION AND USE OF THE VIEQUES RANGES.

3. (C) TWO DIVERGENT VIEWS EXIST ON THE LONG TERM USE OF VIEQUES.

A. OSD VIEW REPORTEDLY SUPPORTED BY CONGRESSIONAL COMMITTEES (ARMED SERVICES AND INTERIOR) AND THE WHITE HOUSE DOMESTIC COUNCIL IS THAT RELOCATION OF CULEBRA TRAINING TO VIEQUES WOULD CREATE A "VIEQUES" PROBLEM WHICH WOULD ULTIMATELY RESULT IN THE LOSS OF VIEQUES. THEREFORE, AT LEAST A TOKEN RELOCATION TO DOG ISLAND IS NECESSARY TO RELIEVE THIS PRESSURE.

B. NAVY VIEW IS THAT RELOCATION TO DOG ISLAND WITH THE ASSISTANCE OF THE COMMONWEALTH WOULD PROVIDE THE WEDGE THE COMMONWEALTH HAS SOUGHT TO ULTIMATELY RELOCATE NAVY AND POSSIBLY MARINE CORPS TRAINING FROM VIEQUES AS WELL.

4. (C) THERE IS LOGIC IN EACH VIEW BUT LITTLE HARD EVIDENCE AVAILABLE TO SUPPORT OR DEFEND EITHER. IT IS GENERALLY AGREED THAT WHEN THE COMMONWEALTH FINDS NO ALTERNATIVE RTO RELOCATION TO VIEQUES, THE PROSPECTS OF SUCH A SETTLEMENT SHOULD BE ENHANCED.

5. (C) DOG ISLAND IS UNDERSTOOD BY ALL TO BE ECONOMICALLY AND

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SPECIAL INSTRUCTIONS

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DTG

MESSAGE TEXT OR INSTRUCTIONS

OPERATIONALLY UNDESIRABLE COMPARED TO VIEQUES. THERE IS, HOWEVER, A REASONABLE EXPECTATION THAT THE BRITISH WILL BE UNABLE TO DELIVER IN THE END. WITH THIS EXPECTATION, WE ARE NOT OBJECTING TO EXPLORATORY DISCUSSIONS OSD AND STATE HAVE INITIATED WITH THE BRITISH--ALWAYS WITH THE CAVEAT THAT A DETERMINATION OF TECHNICAL FEASIBILITY OF THE PROPOSAL REQUIRES ON-SITE SURVEYS, ENVIRONMENTAL ASSESSMENTS OF THE SITE AND ADJACENT ISLANDS, AND PRELIMINARY DESIGN STUDIES. BASED ON THE COMMENTS OF REFERENCE (D), WE WILL PRESS FOR A SIX MONTH CONSULTING CONTRACT STUDY OF DOG ISLAND TO SOLVE THE FEASIBILITY QUESTION IF AND WHEN THE BRITISH SOLVE THE ANGUILLA INDEPENDENCE PROBLEM.

THE INFORMATION PREVIOUSLY PROVIDED ON DOG ISLAND SHOULD BE SUFFICIENT FOR THESE PRELIMINARY DISCUSSIONS.

6. IF TALKS WITH THE BRITISH CONFIRM THAT DOG ISLAND IS STILL AN ALTERNATIVE, WE WILL BE FACED WITH THE DIFFICULT TASK OF CONVINCING OSD THAT RELOCATION TO DOG ISLAND IS SO UNACCEPTABLE THAT THE DEFENSE DEPARTMENT MUST REPORT TO THE CONGRESS THAT THE NEGOTIATIONS

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JOINT MESSAGEFORM

STAFF	DTG	PRECEDENCE	CLASS	EIC	FOR MESSAGE CENTER USE ONLY
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BOOK — MESSAGE TEXT OR INSTRUCTIONS

ARE DEADLOCKED. FROM YOU HAVE NOTED, HOWEVER, THE LONGER WE DISCUSS DOG ISLAND AND THE MORE POLITICALLY FEASIBLE IT APPEARS, THE MORE DIFFICULT WOULD BE TO TAKE THIS COURSE OF ACTION.

7

WITH THIS DEVELOPMENT, IT APPEARS ADVANTAGEOUS TO CONTINUE OUR CURRENT COURSE OF ACTION (OR INACTION) FOR THE PRESENT.

8. (U) WARM REGARDS.

GDS 81

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DD FORM 1 JUL 73 173 (OCR)

CRB 332

April 8, 1971

The Honorable Melvin R. Laird
Secretary of Defense
The Pentagon
Washington, D.C.

Dear Mr. Secretary:

In a very personal way I want to express to you my appreciation of the results achieved with respect to Culebra last week. It has all turned out very well and all have gained. The Culebran people and the citizens of Puerto Rico have seen that the Administration in Washington has heeded their concern. The Navy, with its program for Culebra and the conversion to dud ammunition, has enhanced its standing considerably, so much so that it is a strong possibility that the Culebrans will not want the Navy to leave after the end of 1972. Needless to say, all of this is not lost on our Central and South American neighbors who have been intently watching the Culebran matter and awaiting its outcome. And finally, those of us in the Government here in Puerto Rico can now devote our attention to other pressing matters, for this problem, which has occupied so much of our attention for so long, is now laid to rest.

As you know, it might, in my judgment, have been otherwise. The pitfalls were avoided, however, and I am especially appreciative of your understanding and response to my convictions on these points. I do not know that such an excellent result would have been reached had someone else been Secretary of Defense.

Because of the Culebran achievement, the future is visibly brightened here in Puerto Rico and I anticipate no recurrence or transference of our problem. In any event, I am now able to support the Navy's needs on behalf of national defense from a much stronger position. The social problem has been set aside and the Navy's

true role and importance in Puerto Rico—both very great—are no longer obscured.

As always, I enjoyed talking with you and I look forward to a renewal of the pleasure at an early time. You are a good friend and, much more important, a true friend of Puerto Rico.

With highest regard,

Sincerely yours,
LUIS A. FERRE
Governor

CRB 417

1. "Specify the kinds of weapons range activities conducted on Vieques for each year 1968 through the current month."

   a. "State the number of hours, rounds fired, live rounds fired, troops participating in, and the number of days of artillery practice on Vieques for each year 1968 through the current month;"

   b. "State the number of hours, rounds fired, live rounds fired, ships participating in, and the number of days of Naval Gunfire Support ("NGFS") on Vieques for each year 1968 through the current month;"

   c. "State the number of hours, rounds fired, live rounds fired, sorties flown, jet aircraft participating in, and the number of days of *air-to-ground* target practice on Vieques for each year 1968 through the current month;"

   d. State the total number of hours for each year 1968 through the current month, during which military target practice on Vieques occurred after 8:00 p.m. or before 8:00 a.m.;"

   e. "State the number of air-to-ground and ship missiles fired on Vieques for each year 1968 through the current month."

ANSWER:

1A Arty Vieques	Last 6 mo. 1973	1974	1975	1976	1977	First 6 mo. 1978
Hours	324.1	387.9	272.7	289.0	39.6	132.0
Rounds	2297	29080	13266	8367	225	
Troops						
Days	20	83	24	26	5	6

1B "NGFS" Vieques	Last 6 mo. 1973	1974	1975	1976	1977	First 6 mo. 1978
Hours	202.5	644.4	669.4	715.0	1016.9	559.7
Rounds	2099	7206	8265	7040	8700	3816
Ships	33	91	74	73	97	39
Days*	39	95	85	88	115	49
1C A/G Vieques						
Hours	137.9	159.3	362.6	484.5	1518.1	819.9
Rounds	33779	49052	59219	30801	107,206	100,196
Sorties Jet A/C	861	309	1638	1141	3438	1924
Days*	42	38	92	92	100	63

(SOURCE: RUR 7/73-6/78)

*(SOURCE: SUR)

1D

Information not available

1E

Information not available

NOTE: Certain items/time periods were omitted from the answers to Question 1 due to lack of complete, accurate information.

23. "State the total tonnage of bombs, missiles or other ordnance aimed at Vieques or its vicinity each year since January 1, 1968, through the current month."

ANSWER:

1 July 73 - 31 Dec. 73	(6 mo.)	460.86
1974	(12 mo.)	1065.22
1975	(12 mo.)	1332.51
1976	(12 mo.)	1246.96
1977	(12 mo.)	2402.28
1 Jan. 78 - 30 June 78	(6 mo.)	1942.68

(SOURCE: RUR 7/73-6/78)

a. "state the metal and chemical composition of such ordnance. Identify and submit copies of all documents discussing such composition."

ANSWER:

EOD A/G ORD description list attached.

CRB 419

U.S. NAVY ATLANTIC FLEET WEAPONS
TRAINING FACILITY
FIVE YEAR DEVELOPMENT PLAN
FYS 78-82

* * * *

5-3.1(U) The Inner Range capabilities have been severely restricted as a result of the Navy/Puerto Rican Government Agreement emanating from the political controversy involving Culebra. The Inner Range of the LANFPLT WPNIRAFAC originally consisted of the islands of Vieques and Culebra and adjacent cays. As a result of the Agreement between the Government of Puerto Rico and the Navy, several air-to-ground targets and the strafing range of Culebrita Island have been decommissioned. Based on the agreement 4.5 square acres of Culebrita have been retained for use as site for electronic warfare emitters. The portion of the range consisting of the island of Culebra and adjacent cays has ceased to provide training support to the Fleet inasmuch as Naval Gunfire Support (NGFS) exercises at Culebra and Air-to-Ground weapons training on adjacent cays were discontinued effective 30 September 1975. Notwithstanding these limitations the Inner Range continues to provide the targets and facilities for support of VA, VF, VS, VMA, VMF, VMO, VMFA foreign air units, air-to-ground weapons training requirements and naval gunfire support (NGFS) exercises on a more restricted scheduling basis. Some Development Test and Evaluation (DT&E) efforts have also been supported on the Inner Range. Projected Inner Range usage and service requirements for fiscal years 1978-82 are contained in references (d), (j), (k), (l), and (s). Therefore as of September 1975, the total targets no longer available for training are:

1. Shark Rock (Roca Tiburon)—inert practice ordnance.
2. Palada Cays (Cayos Geniqui)—inert practice ordnance.
3. Ladrone Cay—Day and night air-to-ground target.
4. Culebrita Island—strafing targets on west end of island.
5. Aqua Cay Land Target—Day air-to-ground target.
6. Aqua Cay Hydroscore Target—Day air-to-ground target.
7. Aerial Mining Range-East—Mining exercises, inert ordnance.
8. Aerial Mining Range-West—Mining exercises, inert ordnance.
9. Target 14—Air-to-Ground exercises, practice ordnance and napalm.
10. Fungy Bowl (Alcarraza)—High and low level radar bombing. Conventional ordnance.
11. Twin Rocks * * * over-the-shoulder and dive bombing. Air-to-surface missiles.
12. Northwest peninsula—shore bombardment.
13. Cross Cay—Day and night air-to-ground target.

5-3.2(U) Although targets have been installed at Vieques to replace the loss of the Culebra targets, training limitations are to be expected due to the requirement that scheduling of air-to-ground, close air support, and NGF exercises must be coordinated with the Marine Corps Command by integrating operations scheduling and other controls.

5-3.3(U) The present facilities at Vieques for scoring NGFS and air-to-ground missions are, at best, marginal. The observation post on Cerro Matias consists of a

Butler building and other temporary structures and facilities. Improvement of the scoring and target capability includes a Ship Positioning System, Acquisition Radar, Microwave, Profile Tracking System, TV Bomb/Rocket Scoring System, Pathfinder Radar, and augmented communications and power generating facilities. This improvement program was initiated during CY-74 and will continue through CY-79.

CRB 420

UNITED STATES NAVY ATLANTIC FLEET WEAPONS TRAINING FACILITY FIVE YEAR DEVELOPMENT PLAN FY's 79-83

* * * *

1. (U) The Inner Range capabilities have been severely restricted as a result of the Navy/Puerto Rican Government Agreement emanating from the political controversy involving Culebra. The Inner Range of the LANTFLTWPNTRAFAC originally consisted of the islands of Vieques and Culebra and adjacent cays. As a result of the Agreement, between the Government of Puerto Rico and the Navy, several air-to-ground targets and the strafing range off Culebrita Island have been decommissioned. Based on the agreement 4.5 square acres of Culebrita have been retained for use as site for electronic warfare emitters. The portion of the range consisting of the island of Culebra and adjacent cays has ceased to provide training support to the Fleet, inasmuch as air-to-ground weapons training on adjacent cays was discontinued effective 30 September 1975. Notwithstanding these limitations, the Inner Range continues to provide the targets and facilities for support of: VA, VF, VS, VMA, VMF, VMO, VMFA, foreign air units and air-to-ground weapons training exercises on a more restricted scheduling basis. Some Development Test and Evaluation (DT&E) efforts have also been supported on the Inner Range.

2. (U) The total number of targets no longer available for air-to-ground training since September 1975 are:

a. Shark Rock (Roca Taburon)—inert practice ordnance.

b. Palada Cays (Cayos Geniqui)—inert practice ordnance.

c. Ladrone Cay—day and night air-to-ground target.

d. Culebrita Island—strafing targets on west end of island.

e. Agua Cay Land Target—day air-to-ground target.

f. Agua Cay Hydroscore Target—day air-to-ground target.

g. Aerial Mining Range-East—mining exercises, inert ordnance.

h. Aerial Mining Range-West—mining exercises, inert ordnance.

i. Target 14—air-to-ground exercises, practice ordnance and napalm.

j. Fungy Bowl (Alcarraza)—high and low level radar bombing, conventional ordnance.

k. Twin Rocks (Los Gemelos)—loft, over-the-shoulder and dive bombing; air-to-surface missiles.

l. Cross Cay—day and night air-to-ground target.

3. (U) Although targets have been installed at Vieques to replace the loss of the Culebra targets, training limitations are to be expected due to the requirement that scheduling of air-to-ground and close air support exercises must be coordinated with the Marine Corps Command by integrating operations scheduling and other controls.

4. (U) The present facilities of the Inner Range for scoring air-to-ground missions are at best, marginal. The observation post on Cerro Matias consists of a prefabricated metal type building and other temporary structures and facilities. Improvement of the scoring and target capability—other than the "in progress"—besides the Microwave, TV Bomb/Rocket Scoring System, Pathfinder Radar, and augmented communications includes the other Inner Range projects discussed in this section.

2-6.3(C) FLEET SUPPORT REQUIREMENTS (U)

2 (U) Projected Inner Range A/G Target Complex usage and service requirements for fiscal years 1979-83 are continued in references (c), (d), (g), and (l).

2-6.4(U) DEVELOPMENT GOALS (U)

1. (U) The development of the Inner Range is directed toward the attainment of the following goals:

a. Increased scoring accuracy with less operating personnel to satisfy requirements.

b. Increased automation to obtain remote scoring.

c. Increased realism in target presentation and tactical scenarios.

d. Increased training response to improved weapons.

e. Improved dynamic targets in the Close Air Support Zone.

f. Absorbtion of exercises formerly conducted on the Culebra Complex.

2. (U) During certain artillery fire missions conducted by the U.S. Marine Corps within the Surface Impact Area and/or the Close Air Support Zone, the OP is in the line of fire, thereby forcing all personnel to vacate the area. To avoid loss of stand-down time, endangering lives of personnel, and exposure of equipment, hardening of the site is required. Consequently, MILCON Project P-963: "Vieques Range Operations Center" is included in this FYDP for FY-80 funding.

3-1.2(U) LIMITATIONS

1. (U) The capabilities of the Inner Range to support NGF exercises were severely restricted as a result of the Navy/Puerto Rico Government Agreement emanating from the political controversy involving Culebra. As a result of this Agreement all NGF targets of the Culebra Complex were phased out. On 30 September 1975, the NW Peninsula on Culebra Island ceased to be a shore bombardment range.

2. (U) Although NGF targets have been installed at Vieques to replace the loss of the targets at Culebra, training limitations are to be expected in NGF exercises due to the scheduling of air-to-ground and close air support exercises that cannot be conducted concurrently with NGF exercises, and the need to coordinate all exercises

on the Inner Range with the USMC Command by integrating operations scheduling and other controls.

3. (U) The present facilities of the Inner Range for supporting NGF exercises are at best marginal. Buildings and structures are of a temporary nature and additional instrumentation is required. Aside of the Ship Position Location System, currently under installation, improvements to the NGF Target Complex—other than the "in progress" in microwave and communications—are required as discussed in the projects in this section.

3-1.3(C) FLEET SUPPORT REQUIREMENTS (U)

2. (U) Projected Inner Range NGF Target Complex usage and service requirements for FY's 1979-83 are contained in references (c), (e), (g), (h) and (l).

3-1.4(U) DEVELOPMENT GOALS (U)

1. (U) The development of the Inner Range Naval Gunfire Target Complex is directed toward the attainment of the following goals:

a. Increased scoring accuracy with less operating personnel to satisfy requirements.

b. Increased automation to obtain remote scoring.

c. Increased realism in target presentation and tactical scenarios.

d. Increased training response to improved weapons.

e. Absorbtion of exercises formerly conducted on the Culebra Complex.

2. (U) During certain artillery fire missions conducted by the U.S. Marine Corps within the Surface Impact Area and/or the Close Air Support Zone, the OP is in the line of fire, thereby forcing all personnel to vacate the area. To avoid loss of stand-down time, endangering lives of personnel and exposure of equipment, hardening of the site is required. Consequently MILCON Project P-963: "Vieques Range Operations Center" is included in this FYDP for FY-80 funding.

CRB 421

U.S. ATLANTIC FLEET
WEAPONS TRAINING FACILITY
FIVE YEAR DEVELOPMENT PLAN FYs 80-84

* * * *

1. (U) The Inner Range capabilities have been severely restricted as a result of the Navy/Puerto Rican Government Agreement emanating from the political controversy involving Culebra. The Inner Range of the LANTFLTWPNTRAFAC originally consisted of the islands of Vieques and Culebra and adjacent cays. As a result of the Agreement, between the Government of Puerto Rico and the Navy, several air-to-ground targets and the strafing range off Culebrita Island have been decommissioned. Based on the agreement, 4.5 square acres of Culebrita have been retained for use as site for electronic warfare emitters. The portion of the range consisting of the island of Culebra and adjacent cays has ceased to provide training support to the Fleet, inasmuch as air-to-ground weapons training on adjacent cays was discontinued effective 30 September 1975. Notwithstanding these limitations, the Inner Range continues to provide the targets and facilities for support of: VA, VF, VS, VMA, VMF, VMO, VMFA, foreign air units and air-to-ground weapons training exercises, although on a more restricted scheduling basis. Some Development Test and Evaluation (DT&E) efforts have also been supported on the Inner Range.

2. (U) The total number of targets no longer available for air-to-ground training since September 1975 are:

a. Shark Rock (Roca Tiburon)—inert practice ordnance.

b. Palada Cays (Cayos Geniqui)—inert practice ordnance.

c. Ladrone Cay—day and night air-to-ground target.

d. Culebrita Island—strafing targets on west end of island.

e. Agua Cay Land Target—day air-to-ground target.

f. Agua Cay Hydroscore Target—day air-to-ground target.

g. Aerial Mining Range-East—mining exercises, inert ordnance.

h. Aerial Mining Range-West—mining exercises, inert ordnance.

i. Target 14—air-to-ground exercises, practice ordnance and napalm.

j. Fungy Bowl (Alcarraza)—high and low level radar bombing, conventional ordnance.

k. Twin Rocks (Los Gemelos)—loft, over-the-shoulder and dive bombing; air-to-surface missiles.

l. Cross Cay—day and night air-to-ground target.

3. (U) Although targets have been installed at Vieques, training limitations are to be expected due to the requirement that scheduling of air-to-ground, NGFS and close air support exercises must be coordinated with the Marine Corps Command by integrating operations scheduling, and other controls.

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3-1.2(U) LIMITATIONS

1. (U) The capabilities of the Inner Range to support NGF exercises were severely restricted as a result of the Navy/Puerto Rico Government Agreement emanating from the political controversy involving Culebra. As a result of this Agreement all NGF targets of the Culebra Complex were phased out. On 30 September 1975, the NW Peninsula on Culebra Island ceased to be a shore bombardment range.

2. (U) Although NGF targets have been installed at Vieques, training limitations are to be expected in NGF exercises due to the scheduling of air-to-ground and close air support exercises that cannot be conducted concurrently with NGF exercises, and the need to coordinate all exercises on the Inner Range with the USMC Command by integrating operations scheduling and other controls.

3. (U) The present facilities of the Inner Range for supporting NGF exercises are at best marginal. Buildings and structures are of a temporary nature and additional instrumentation is required. Aside from the Ship Position Location System, recently installed, improvements to the NGF Target Complex—other than in microwave and communications—are required as discussed in the projects in this section.

3-1.3(C) FLEET SUPPORT REQUIREMENTS (U)

2. (U) Projected Inner Range NGF Target Complex usage and service requirements for FY's 1980-84 are contained in references (c), (d), (g), (h) and (i).

3-1.4(U) DEVELOPMENT GOALS (U)

1. (U) The development of the Inner Range Naval Gunfire Target Complex is directed toward the attainment of the following goals:

a. (U) Increased scoring accuracy with less operating personnel to satisfy requirements.

b. (U) Increased automation to obtain remote scoring.

c. (U) Increased realism in target presentation and tactical scenarios.

d. (U) Increased training response to improved weapons.

e. (U) Absorption of exercises formerly conducted on the Culebra Complex.

2. (U) During certain artillery fire missions conducted by the U.S. Marine Corps within the Surface Impact Area and/or the Close Air Support Zone, the OR is in the line of fire, thereby forcing all personnel to vacate the area. To avoid loss of stand-down time, endangering lives of personnel and exposure of equipment, hardening of the site is required. Consequently, MILCON Project P-963: "Vieques Range Operations Center" is included in this FYDP for FY-82 funding.

SUPREME COURT OF THE UNITED STATES

No. 80-1990

CASPAR W. WEINBERGER, SECRETARY OF DEFENSE, ET AL., PETITIONERS

v.

CARLOS ROMERO-BARCELO, ET AL.

ORDER ALLOWING CERTIORARI

Filed October 5, 1981

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted.

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